

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

WORCESTERSHIRE COUNTY COUNCIL

**Proof of Evidence of Christopher Whitehouse BSc (Hons) MRICS,
RICS Accredited Expert Witness**

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- WCC24 Wychavon DC v Secretary of State for Communities and Local Government and Butler [2008] EWCA Civ 692
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1.0 Introduction

- 1.1 I am Christopher Whitehouse, a Member of the Royal Institution of Chartered Surveyors (MRICS). I hold a Bachelor of Science degree in Planning and Development Surveying from Northumbria University and I am an RICS Accredited Expert Witness in Planning. I am also a member of the National Expert Witness Agency (NEWA).
- 1.2 I am the Managing Director of planning consultancy NextPhase, an RICS Regulated Practice that I have owned and managed since its formation in 2011; having beforehand worked as a planning consultant in a Minerals Planning Consultancy.
- 1.3 I have over 14 years' experience in a broad range of planning matters, and have worked extensively on Green Belt issues associated with major planning applications, including minerals sites, and with regard to emerging Local Plan assessments across that time.
- 1.4 I have acted as planning consultant for minerals and waste operators such as The Land and Water Group, including application management for the largest inert waste regeneration scheme in Greater London at the Rainham Silt Lagoons and Thames Jetty.
- 1.5 I have also worked extensively across a broad range of planning appeals, including a number of Public Inquiries and Hearings, acting as both lead advocate and expert witness.
- 1.6 I am familiar with the appeal site, the wider area and the relevant national and local planning policy.

2.0 Background and Scope of Evidence

2.1 I have been asked to appear as witness at this Inquiry on behalf of Worcestershire County Council (“WCC” or “The Council”) in relation to the decision to refuse consent for application 19/000053/CM on 27th May 2022.

2.2 The application was refused with 9 reasons for refusal; as noted in the WCC Statement of Case, it is the intention of WCC 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.

2.3 This proof of evidence will consider the issues captured within the Inspector’s Pre-Conference Note for the Case Management Conference (CMC), which notes the main issues in this appeal to be:

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.

2.4 My evidence is presented under the following sections:

- Section 3 – Planning Policy Context
- Section 4 – Analysis of Main Issues
 - 4.1 – Minerals Supply
 - 4.2 – Green Belt Issues
 - 4.3 – Amenity Issues

- Whether Very Special Circumstances Exist

- Section 5 - Conclusions

- 2.5 A signed Statement of Common Ground (“SoCG”) has been prepared between WCC and the Appellant, which further to the matters of agreement and disagreement within the appeal, provide both a site location description and a description of the proposed development.

- 2.6 The Council reserves the right to consider and respond to issues raised by the Appellant in the submission of their evidence, through rebuttal proofs if necessary, in accordance with the instructions raised within the CMC Pre-Conference Note.

- 2.7 The evidence prepared and provided for this appeal in this proof of evidence is independent, has been prepared by me and is given in accordance with the guidance of my professional institution, the Royal Institution of Chartered Surveyors. The opinions expressed are my true and professional opinions.

3.0 Planning Policy Context

3.1 The Development Plan

Section 70 (2) of the Town and Country Planning Act 1990 and 38 (6) of the Planning and Compulsory Purchase Act 2004 together require that planning applications must be determined in accordance with the statutory Development Plan unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) (2021) and Planning Practice Guidance (PPG) are material considerations.

3.2 The requirement to determine applications “in accordance with” the plan does not mean that applications must comply with each and every policy, but is to be approached on the basis of the plan taken as a whole. This reflects the fact, acknowledged by the Courts, that development plans can have broad statements of policy, many of which may be mutually irreconcilable so that in a particular case one must give way to another.

3.3 The statutory adopted Development Plan of relevance to this appeal comprises of the following:

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

3.4 Reason for refusal 1 of the planning decision refers to Policy 2 (Other Sand and Gravel Deposits) of the County of Hereford and Worcester Minerals Local Plan (Adopted April 1997) (Saved Policies). In the period since the decision notice was issued by the Council, the Worcestershire Minerals Local Plan has been adopted and the County of Hereford and Worcester Minerals Local Plan has been superseded. Reason for refusal 1 refers specifically to Policy 2 of the superseded Local Plan. No policy within the adopted Minerals Local Plan provides consistency with Policy 2, and as such reason 1 is not defended by the Council within the appeal.

3.5 The Council are in the process of preparing a Minerals Site Allocations Development Plan Document (DPD) to support the Minerals Local Plan by allocating “specific sites” and “preferred areas” for mineral extraction. “Specific Sites” are where viable resources are known to exist, landowners are supportive of minerals development and proposals are likely to be acceptable in planning terms. Such sites may also include essential operations associated with mineral extraction. “Preferred Areas” are areas of known resources where planning permission might reasonably be anticipated. Such areas may

also include essential operations associated with mineral extraction. A review of the consultation outcomes of a Preferred Options draft of the DPD is currently ongoing and, having consideration of Chapter 4 of the NPPF, negligible weight can be afforded to it in terms of the determination of this appeal.

3.6 The main contribution of the Wyre Forest District Local Plan in relation to minerals extraction is through the designation of boundaries and extent of the Green Belt. The appeal site is clearly located within the Green Belt because of Policy SP.7 of the Wyre Forest District Local Plan and the associated Policy Map.

3.7 The SoCG provides a list of Development Plan policies considered relevant to the appeal. The following summarises the policy considerations of particular relevance to the Council's case.

3.8 The Worcestershire Minerals Local Plan (MLP)

The MLP was adopted in 2022 and covers the period between 2018 and 2036. The MLP was prepared in accordance with the NPPF and as such there are no conflicts with national policy. Full weight can therefore be afforded to its policies.

3.9 Policy MLP 1 provides that WCC will secure most of its minerals over the life of the plan from its Strategic Corridors, and that development for sand and gravel and silica sand will be supported within the corridors but not normally elsewhere within the county.

3.9 Policy MLP 3 part b) provides that WCC will grant new mineral developments on windfall sites within strategic corridors where there is a shortfall in supply (as defined by part c)) and it can be clearly demonstrated that any viability, environmental or amenity constraints can be satisfactorily managed or mitigated to allow extraction of the mineral resource (part b) ii).

3.10 The issue of shortfall in supply, as per part c) of MLP 3, defines a shortfall 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; or*
- ii. *there are sufficient extant sites and allocated specific sites and/or preferred areas to meet the scale of provision required over the life of the plan but one of the following applies:*
 - *there is a demonstrated shortfall in the landbank or stock of permitted reserves demonstrated in the most recent Local Aggregate Assessment (for aggregate development proposals) or Authority Monitoring Report (for non-aggregate development proposals); or*

- *there is a demonstrated shortfall in productive capacity in the most recent Local Aggregate Assessment (for aggregate development proposals) or Authority Monitoring Report (for non-aggregate development proposals); or*
- *there is a demonstrated shortfall in supply of the relevant mineral for particular uses or specifications which would be addressed by the proposed development; or*
- *there is a demonstrated shortfall for a particular geographic market area which would be addressed by the proposed development.*

3.11 It is the Appellants case that there is an insufficient provision of extant sites and allocated sites to meet the scale of provision required over the life of the plan at the present time, and that, as such MLP Policy 3 part c) i) applies to the case.

3.12 Policy MLP 7 provides that WCC will grant planning permission for proposed mineral development where an “appropriate provision of technical assessment” has demonstrated that the development will, throughout its lifetime, deliver optimised benefits that include, at part a) *“the local economic, social and environmental context of the site”* and, at part c) i), take site specific opportunities to *“protect and enhance inherent landscape character”*.

3.13 Policy MLP 11 refers to the North West Worcestershire Strategic Corridor, within which the appeal site is located. It states that planning permission will be granted for mineral development within the Corridor that *“contributes towards the quality, character and distinctiveness of the corridor through the conservation, delivery and enhancement of green infrastructure networks”* and requires technical assessment to demonstrate such contribution throughout each stage of a site’s life. Where very limited or negligible contribution is made towards these priorities, permission will only be granted *“where the economic, social and/or environmental benefits of the proposed development outweigh the benefits of delivering the corridor priorities”*.

3.14 Policy MLP 14 provides that WCC will seek to maintain a landbank of at least 7 years throughout the plan period and sufficient capacity of sand and gravel will be maintained to *“at least meet the guideline in the most recent Local Aggregate Assessment”*. The policy provides scale of provision required across the plan period at part a) and the approach to be taken to securing that provision of supply from a combination of extant and new developments at part b).

- 3.15 Policy MLP 15 identifies that planning applications for minerals development are required to identify the contribution that such a grant of permission would make towards maintaining a landbank of permitted sand and gravel reserves in the county.
- 3.16 Policy MLP 16 at part a) provides that WCC will support mineral extraction and/or engineering operations in the Green Belt where *“a level of technical assessment appropriate to the proposed development demonstrates that, throughout its lifetime, the mineral extraction and/or engineering operations will:*
- *preserve the openness of the Green Belt; and*
 - *not conflict with the purposes of including land within the Green Belt”.*
- 3.17 At part b) the policy provides that *“where any aspect of the proposed development is inappropriate in the Green Belt - including mineral extraction and/or engineering operations that cannot satisfy the tests in part (a) above - it will only be supported where a level of technical assessment demonstrates that very special circumstances exist that mean 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”.* The policy refers to the NPPF with regards to what is defined as inappropriate development in the Green Belt.
- 3.18 Policy MLP 28 provides that WCC will grant planning permission *“where it is demonstrated that the proposed mineral development, including associated transport, will not give rise to unacceptable adverse effects on amenity or health and well-being”.* Technical assessment is required to demonstrate that throughout its lifetime and taking into account *“the cumulative effects of multiple impacts from the site and/or a number of sites in the locality”*, the proposal would not cause harm to receptors from dust, odour, noise and vibration, light, visual impact and/or contamination.
- 3.19 Policy MLP 29 provides that WCC will grant planning permission where minerals development will not cause unacceptable adverse effects on air quality. Technical assessment is required to demonstrate that throughout its lifetime and taking into account *“the cumulative effects of multiple impacts from the site and/or a number of sites in the locality”* that the proposed development will, at part a) *“not cause unacceptable harm to sensitive receptors, sensitive habitats, or designated sites of importance for biodiversity from air quality”.*

- 3.20 Policy MLP 30 provides that WCC will grant planning permission where minerals development will not, at part b) *“have an unacceptable adverse effect on the integrity and quality of publicly accessible green space”*.
- 3.21 Worcestershire Waste Core Strategy Development Plan Document (WCS)
The WCS was adopted in 2012 and covers the period between 2012 and 2027. The WCS provides no conflict with national policy. Full weight can be afforded to its policies.
- 3.22 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.
- 3.23 Policy WCS 14 states that waste management facilities will be permitted where it has been demonstrated that the facilities would not have *“unacceptable adverse impacts on amenity”*. The assessment must include, amongst other issues, the impact on air quality including dust, noise and vibration and visual intrusion. Cumulative effects must be considered and where amenity is demonstrated to be adverse, permission will only be granted where the benefits of the development *“clearly outweigh any unacceptable adverse impacts”*.
- 3.24 Wyre Forest District Local Plan (WFLP)
The Wyre Forest District Local Plan (2016 – 2036) was adopted by Wyre Forest District Council in April 2022. It sets out the long-term vision and strategic context for managing and accommodating growth within Wyre Forest District, within which the site is located, until 2036.
- 3.25 Policy SP.16 provides that development should minimise negative health impacts by minimising and mitigating, as per part b) *“the impacts of negative air quality and reducing people’s exposure to poor air quality”*.
- 3.26 Policy SP.33 provides that development must be designed so as to avoid any significant adverse impacts from pollution, including cumulative impact. This includes, but is not limited to, bullet point 1 (*“human health and wellbeing”*) and bullet point 4 (*“the effective operation of neighbouring land uses”*).
- 3.27 Policy DM.22 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), of which g) states *“other operations, including changes of use which preserve the openness of the Green Belt and do no 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”*.

3.28 Policy SP.LCV1 provides a strategic allocation for the development of a “sustainable village of high quality design” known as Lea Castle Village, which over the plan period is expected to provide for 1,400 dwellings (600 already have permission), 7 hectares of employment land, a primary school, village centre, sports pitches, allotments and designated open space. The site is located to the immediate east of the appeal site, and within 250m of the proposed phase of working.

3.29 National Planning Policy Framework (NPPF/ “The Framework”)

The NPPF (updated in 2021) does not change the fundamental premise of Section 38(6) of the Planning and Compulsory Purchase Act 2004 (Paragraph 2). The NPPF must be taken into account in preparing the development plan and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.

3.30 At the heart of the NPPF is a presumption in favour of sustainable development, for which three ‘dimensions’ are identified, namely an economic role, a social role, and an environmental role. The implication is that to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system.

3.31 Green Belt Policy

National planning policy on the approach to the Green Belt within both plan-making and decision-taking is set out in Section 13. The protection of the Green Belt is a component of the purpose of the planning system to contribute to the achievement of sustainable development.

3.32 Paragraph 137 indicates 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.

3.33 Paragraph 138 notes that the Green Belt serves five purposes:

1. to check the unrestricted sprawl of large built-up areas;
2. to prevent neighbouring towns merging into one another;
3. to assist in safeguarding the countryside from encroachment;

4. to preserve the setting and special character of historic towns; and
5. to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

3.34 Paragraph 147 states that *“inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances”*.

3.35 Paragraph 148 states that local planning authorities should apply substantial weight to any harm to the Green Belt. Very special circumstances (VSC) 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”*.

3.36 Paragraph 149 says that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt and at Paragraph 150, identifies certain operations that are not inappropriate in the Green Belt provided that they preserve its openness and do not conflict with the purposes of including land within it. These include, at part a) mineral extraction and at part b) engineering operations (such as formation of screen bunds). This does not mean that a minerals development is automatically allowable in the Green Belt, as consideration needs to be given to how it affects openness, with an expectation of preserving it. However, the temporary nature of minerals developments must also be taken into account.

3.37 Amenity Policy

Conserving the natural environment and amenity are issues set out in paragraphs 174 and 185 of the NPPF. Paragraph 174 refers to preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability.

3.38 Paragraph 185 states that:

“Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life;

- b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason; and*
- c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.”*

3.39 Minerals Policy

Paragraph 209 of the NPPF notes that minerals can only be worked where they naturally occur.

3.40 All mineral proposals also need to be considered in response to paragraph 210 of the NPPF, and in particular, those aspects which are relevant to this case are:

- a) *“provide for the extraction of mineral resources of local and national importance;”*
- f) *“set out criteria or requirements to ensure that permitted and proposed operations do not have unacceptable adverse impacts on the natural and historic environment or human health, taking into account the cumulative effects of multiple impacts from individual sites and/or a number of sites in a locality;” and*
- g) *“when developing noise limits, recognise that some noisy short-term activities, which may otherwise be regarded as unacceptable, are unavoidable to facilitate minerals extraction”.*

3.41 Paragraph 211 notes that when determining planning applications, *“great weight should be given to the benefits of mineral extraction, including to the economy”.*

3.42 Paragraph 213 of the NPPF states that one of the means by which Minerals planning authorities should plan for a steady and adequate supply of aggregates is by maintaining landbanks of at least 7 years for sand and gravel, whilst ensuring that the capacity of operations to supply a wide range of materials is not compromised.

4.0 Analysis of Main Issues

4.1 Minerals Supply

Policy MLP 14 provides that WCC will seek to maintain a landbank of at least 7 years throughout the plan period and sufficient capacity of sand and gravel will be maintained to “at least meet the guideline in the most recent Local Aggregate Assessment”. The policy provides scale of provision required across the plan period at part a) and the approach to be taken to securing that provision of supply from a combination of extant and new developments at part b).

4.2 Reliable assessment of the landbank can only be taken annually. The Local Aggregates Assessment (LAA) of June 2020 covered the period up to 31 December 2017 and calculated the annual provision requirements on a rolling average of 10 years sales data in Worcestershire and other relevant local information. In 2017, sales of sand and gravel in Worcestershire were 0.455 million tonnes. The 10-year average of sales from 2008 to 2017 including combined data with Herefordshire Council for 2012 and 2013 was 0.572 million tonnes. On 31 December 2017, the total permitted sand and gravel reserves for Worcestershire was about 3.465 million, the equivalent of a landbank of 6.06 years.

4.3 Assuming annual sales figures of 0.572 million tonnes, based on the rolling 10 years' average continued, then the landbank of permitted reserves at 31 December 2020 would have been approximately 1.749 million tonnes of sand and gravel, equating to about 3.06 years. Consequently, on 31 December 2020 the County Council did not have sufficient reserves of sand and gravel available with planning permissions to meet its annual provision requirements based on sales in accordance with national planning policy and guidance.

4.4 As noted in the Officers Planning Committee Report of May 2022 (CD10.01), in 2021 the Council granted planning consent on 25 March 2021 for a proposed sand quarry on land adjacent to the former Chadwich Lane Quarry, Bromsgrove. With a proposed extraction provision of 1.35million tonnes, this increased the landbank by approximately 2.36 years, to approximately 5.42 years. Assuming a continuation of average sales of 0.572million, the landbank of permitted reserves at 31 December 2021 was estimated at 2.527 million tonnes of sand and gravel, equating to a 4.42 years supply position presented within the Committee Report.

4.5 It was estimated at the time of the report, that had the appeal scheme been approved, it would have increased the landbank by approximately 5.24 years, equating to a landbank of 9.66 years prior to consideration of sales across the first half of 2022.

- 4.6 In the period of time since the appeal scheme was refused planning consent, Worcestershire County Council have granted planning consent for the following schemes:
- Bow Farm Quarry, Bow Lane, Ripple – Extraction of approximately 1.44 million tonnes of sand and gravel (Council Ref: 19/000048/CM) (WCC11), increasing the landbank by approximately 2.52 years¹.
 - Ryall North Quarry, Land off Ryall's Court Lane, Holly Green, Upton-upon-Severn –Extraction of approximately 475,000 tonnes of sand and gravel (Council Refs: 20/000009/CM and 20/000015/CM) (WCC12), increasing the landbank by approximately 0.83 years.
 - Sandy Lane Quarry, Wildmoor - Extraction of approximately 245,000 tonnes of sand (Council Ref: 21/000029/CM) (WCC13), increasing the landbank by approximately 0.43 years.
- 4.7 The latest Local Aggregate Assessment was published by the Council in January 2023 (WCC21) (CD11.06). It concluded that a significant uplift of demand should be applied to sand and gravel resources by comparison to the previous LAA; identifying a required annual production guideline for sand and gravel of 0.827 million tonnes. Based on the production guideline and stock of permitted reserves, it was concluded that Worcestershire had a landbank of 4.14 years at 31st December 2021.
- 4.8 The Council have produced a Sand and Gravel Landbank Position Statement (WCC15) which concludes that, when taking into account the permitted sites at Bow Farm, Ryall North and Sandy Lane, the estimated landbank to be 5.74 years as of 31 December 2022. This is a substantial improvement of the landbank by comparison to the position as of 31 December 2021, but still short of the 7 years as required by MLP 14.
- 4.9 There are two extant sand and gravel planning applications due for determination by WCC this year, subject to submission of further information as requested by a Regulation 25 submission for both applications. My understanding is that both applications are at an advanced stage and further progress can be advised of at the Inquiry. Planning application 19/000056/CM at Pinches Quarry, Wildmoor (WCC22) proposes the extraction of approximately 1 million tonnes of sand and gravel and would increase the landbank by approximately 1.21 years. Planning application 22/000015/CM at Ripple East, Bow Lane, Ripple (WCC23) proposes the extraction of approximately 475,000 tonnes of sand and gravel and would increase the landbank by approximately 0.57 years.
- 4.10 If these applications were to be approved and taking into account the Council's Sand and Gravel Landbank Position Statement, this would increase the landbank to approximately 7.52 years.

¹ Cross-boundary application with Gloucestershire County Council (GCC). GCC Planning Committee resolved to refuse the application (Ref: 19/0081/TWMAJM) on 26 January 2023.

4.11 It is concluded that the Council's current landbank position has improved since the original determination of the appeal scheme, but still falls short of the 7 years landbank requirement. The approval of the appeal scheme would increase the landbank by 3.63 years and as such exceed the requirements of MLP 14. However, it is also noted that the grant of permission for sites shortly to be determined by the Council would also increase the landbank to in excess of 7 years.

4.12 **Green Belt Issues**

Paragraph 137 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. The purposes of the Green Belt are; to check unrestricted sprawl of large built-up areas; to prevent neighbouring towns merging; to assist in safeguarding the countryside from encroachment; to preserve the setting and special character of historic towns; and to assist in urban regeneration.

4.13 NPPF paragraph 145 provides that local planning authorities should plan positively to enhance the beneficial use of Green Belts, such as looking for opportunities to provide access; to provide opportunities for outdoor sport and recreation; to retain and enhance landscapes, visual amenity and biodiversity; or to improve damaged and derelict land. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In considering applications substantial weight should be given to any harm to the Green Belt. The NPPF adds that '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.

4.14 Paragraph 150 of the NPPF indicates that 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. In other words, mineral extraction remains inappropriate development in the Green Belt unless it can be demonstrated that the proposal both preserves the openness of the Green Belt and does not conflict with the purposes of including land within the Green Belt.

4.15 What comprises 'mineral extraction' for the purposes of applying this policy is not defined in the NPPF. However, section 55 of the 1990 Act defines mining operations to include the removal of material of any description from a mineral-working deposit. With regard to the imposition of conditions for

mineral working schedule 5 of the 1990 Act refers to the winning and working of minerals. Therefore, it is reasonable to conclude that 'mineral extraction' should include plant and infrastructure necessary to facilitate the winning and working of minerals. To that extent, it is considered that the plant and machinery included within proposal is limited to that necessary to facilitate mineral extraction.

- 4.16 The requirement to preserve openness means that proposals must not reduce openness or cause harm to the Green Belt and if they do must demonstrate VSC as set out in the NPPF. A part of these VSCs will be a need to demonstrate why any chosen method or approach is not able to avoid or minimise a reduction of openness.
- 4.17 It is important to define what openness is. The objective of Green Belt policy in line with NPPF paragraph 137 is the prevention of urban sprawl, which means that openness is defined for its intrinsic quality, and the avoidance of increased sprawl and not necessarily about sensitive receptors to such sprawl or potential landscape and visual impacts. *Turner*² (WCC18) (CD12.05) determined that the concept of openness of the Green Belt *"is not narrowly limited to the volumetric approach suggested by [counsel]. The word 'openness' is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs ... and factors relevant to the visual impact on the aspect of openness which the Green Belt presents"*.
- 4.18 *Samuel Smith*³ (WCC17) (CD12.06) provided further analysis of openness, beyond a broad support for *Turner*, stating that *"The concept of "openness" in paragraph 90 of the NPPF [2012 version] seems to me a good example of such a broad policy concept. It is naturally read as referring back to the underlying aim of Green Belt policy, stated at the beginning of this section: "to prevent urban sprawl by keeping land permanently open ...". Openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt. As Planning Policy Guidance 2 made clear, it is not necessarily a statement about the visual qualities of the land, though in some cases this may be an aspect of the planning judgement involved in applying this broad policy concept. Nor does it imply freedom from any form of development. Paragraph 90 shows that some forms of development, including mineral extraction, may in principle be appropriate, and compatible with the concept of*

² *Turner v. SSCLG* [2016] EWCA (CIV 466)

³ *Samuel Smith R (on the application of Samuel Smith Old Brewery [Tadcaster] and others (Respondents) V North Yorkshire County Council (Appellant)* [2020] UKSC3)

openness. A large quarry may not be visually attractive while it lasts, but the minerals can only be extracted where they are found, and the impact is temporary and subject to restoration. Further, as a barrier to urban sprawl a quarry may be regarded in Green Belt policy terms as no less effective than a stretch of agricultural land”, and: “[Openness] is a matter not of legal principle but of planning judgement for the planning authority or the inspector”.

- 4.19 *Samuel Smith* differentiates itself from *Turner* in concluding that there is not a clear distinction between openness and visual impact; it is a reasonable expectation that in assessing openness decision makers should take into account the likely visual impacts of development on the openness of the Green Belt. It is reasonable to assume that in assessing openness, the decision maker should determine whether the proposal offers any visual or spatial effects on the openness on the Green Belt, and whether such effects are likely to be harmful or benign.
- 4.20 To be appropriate development in the Green Belt, it is not a prerequisite that openness is maintained. Mineral extraction may not be inappropriate as long as it preserves openness in accordance with paragraph 150 of the NPPF. It therefore comes down to the specific details of the proposals; determining the “tipping point” beyond minerals excavation that would preserve openness and not conflict with the purposes of including land within the Green Belt, depends on the particular circumstances of the proposal as a matter of fact and degree. Relevant considerations could include the siting, nature and scale of the operational development within the local context, include its cumulative context, along with its visual effects, the impacts of its duration and the reversibility of any impact on the openness and purposes of the Green Belt.
- 4.21 This position is further underpinned by the advice of Planning Practice Guidance (PPG) paragraph 64-001-20190722 which notes that when *“assessing the impact of a proposal on the openness of the Green Belt, where it is relevant to do so, requires a judgment based on the circumstances of the case. By way of example, the courts have identified a number of matters which may need to be taken into account in making this assessment. These include, but are not limited to:*
- *openness is capable of having both spatial and visual aspects – in other words, the visual impact of the proposal may be relevant, as could its volume*
 - *the duration of the development, and its remediability – taking into account any provisions to return land to its original state or to an equivalent (or improved) state of openness*
 - *the degree of activity likely to be generated, such as traffic generation”*

4.22 For planning judgements openness is often equated with “absence of built development”. Sprawl is a multi-faceted concept and thus has a variety of different definitions which may apply according to context. Sprawl is the converse of open and undeveloped land and may include an uncontrolled or cluttered urban fringe or development which adds to a loss of attractiveness or sense of untidiness. A related term used in NPPF at paragraph 138 c) is ‘encroachment’ which is generally defined as a gradual advancement of urbanising influences through physical development or land use change.

4.23 Taking into account the matter of a “tipping point,” it is expected that any approach to minerals development within the Green Belt would optimise design in balance with operational needs to seek to preserve the openness of the Green Belt and the effect on Green Belt purposes, so as not to be inappropriate.

4.24 The Appellants predominant consideration of the impact on openness of the Green Belt rests on the fact that the proposal is operational for a temporary duration and is mitigated for, in part, by engineering operations such as temporary soil storage/visual screening bunds. In my opinion, this operational phase, both in isolation and as part of a cumulative impact, has an impact on the landscape and causes harm to the openness of the Green Belt.

4.25 Against that set out above, I consider the main issues are:

- the effect of the proposal on the character and appearance of the area and thus on the openness of the Green Belt and the purposes of including land within it; and
- if it is inappropriate development; and
- 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.

4.26 Existing character of the Appeal Site

The site is generally undulating with a slight valley feature to the central west area at approximately 60 metres Above Ordnance Datum (AOD) running eastwards to a track at approximately 69 to 70 metres AOD. Levels to the south, central and northern portions of the western area of the site are approximately 67 metres AOD. The eastern area of the site features a central knoll (a small round hill) at approximately 83 metres AOD with land levels falling to the west to approximately 69 metres AOD, to the north to approximately 72 metres AOD and to the east to approximately 53 metres AOD. Land levels to the south of the knoll are at approximately 80 metres AOD.

4.27 The site is bounded to the south-west, west, and north-west by woodland, beyond which are residential properties accessed off Brown Westhead Park. The irregularly shaped northern appeal boundary is mainly comprised of agricultural fields interspersed with farm buildings and residential properties. The eastern boundary is comprised of the Wolverhampton Road (A449), beyond which lie agricultural fields, which form part of the Lea Castle Village allocation site. The southern boundary is comprised of a wall adjacent to the Wolverley Road (B4189), individual areas of vegetation and trees, and residential properties.

4.28 Footpath WC-624 runs east to west across the western area of the site, adjoining footpaths WC-622 and WC-623, which run north to south on the western boundary of the appeal site. Bridleway WC-626 runs on a north-south alignment in the centre of the appeal site, adjoining bridleway WC-625, which runs in a north-easterly direction adjoining the junction of Castle Road / A449.

4.29 The appeal site measures approximately 46 hectares in area and is located approximately 330m north of the settlement boundary for the town of Kidderminster, approximately 680 metres and 850 metres east of the villages of Wolverley and Fairfield, respectively, and approximately 350m south of the village of Cookley.

4.30 Analysis of the development and its effect on openness

The proposal seeks to extract approximately 3 million tonnes of sand and gravel (about 1.57 million tonnes of sand and gravel and 1.43 million tonnes of solid sands), from two distinct areas – the western and eastern areas, totalling approximately 26 hectares within the wider site. The depth of extraction is anticipated to be between 5 to 7 metres in the western area and 7 to 12 metres in the eastern area, at a maximum depth of 18 metres. The working method involves excavating the raw material, using a tracked excavator or rubber tyred loading shovel and loading it into dump trucks at the quarry face. In Phases 1, 2 and 3 (the western part of the site) the sand and gravel would be transported to a proposed field hopper and conveyor located within the eastern part of Phase 2, where it would be conveyed under the existing track and public right of way (bridleway WC-626) to the proposed processing plant site. In Phases 4 and 5 the dump trucks would transport the excavated material to the processing plant via temporary haul road; the only exception to this is the excavation of mineral from the southern half of the processing plant site within the initial works phase; this will be transferred offsite and sold, or processed, elsewhere. The annual proposed output of sand and gravel is an estimated 300,000 tonnes.

- 4.31 The footprint of the processing plant site area measures approximately 3.8ha and would be located circa 7m below the existing ground level of 70.5m AOD. The plant site would be surrounded by a soil storage bund, providing visual screening, at a height of 3m to the north and south and between 4 and 5m to the west. The east provides for higher ground, up to 80m AOD. An overburden bund would be located to the northern processing plant area and have a height of 6m.
- 4.32 The processing plant area itself would provide for the following (see plan KD.LCF.021 in CD1.22):
- The mineral processing plant – measuring a total of approximately 43 metres wide by 53 metres long by 12 metres high.
 - Site office and welfare facilities which would comprise of three portacabins, the two larger portacabins being placed one above the other to create double storey cabin, each measuring approximately 12.4 metres long by 4.2 metres wide by 2.9 metres high, resulting in an overall height of approximately 5.8 metres. This double portacabin would provide office, small kitchen, canteen and a single water closet (WC) facility on the ground floor, with an office and meeting / training room on the upper storey. Immediately beside this is a proposed single storey portacabin measuring approximately 3.8 metres long by 2.8 metres wide by 2.9 metres high, which would house three further WCs and a shower room.
 - Wheel wash.
 - Weighbridge, which would measure a maximum of 27 metres long (overall length, including ramps) by approximately 3 metres wide by 0.5 metres high.
 - Stocks of product – stockpiles of product of 20mm, 10mm, coarse sand, fine sand and ultra-fine sand measuring about 5 metres in height.
 - 2 cylinders (tanks) for a silt management / water cleansing system – measuring a maximum of 6 metres wide by approximately 3 metres high.
 - Approximately 12 staff and visitor car parking spaces.
- 4.33 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. A kerbed central island would be provided within the access bellmouth to prevent HGVs from turning right onto the Wolverley Road (B4189) when exiting the site.
- 4.34 The land would be worked in a total of 6 phases (Initial Works, Phases 1, 2, 3, 4 and 5), beginning by working and setting up the processing plant site in the centre of the site, then commencing extraction in the western area working north to south, crossing over to the eastern area working south to north.

The proposed development of the site is illustrated by plans KD LCF 003, 004, 005, 006, 007, 008, 009, 021, 022 (Core Documents CD1.22-30).

4.35 The new quarry can therefore be summarised as comprising of the following key elements:

- new access onto the public highway;
- a kerbed central island within the highway;
- internal haul roads;
- plant site including processing plant, stockpiles, weighbridge, wheel wash, water cylinders, car parking, offices and other ancillary facilities;
- peripheral screening bunds; and
- a mineral extraction area divided into 6 phases, including the initial works excavation.

4.36 The initial works phase would involve the following operations:

- creation of a new vehicle access onto Wolverley Road (B4189) with a short site internal road into the proposed processing plant site.
- Soil stripping of the internal access route and processing plant site area and used to create soil storage / screening bunds around the processing plant site (bunds 1 to 5). Bunds to be seeded with floristic meadow mix. Storage area 6 topsoil to be placed onto an existing undisturbed field, located to the east of the proposed processing plant site (Phase 4) to a thickness of 300mm, and farmed.
- Mineral from within the southern half of the processing plant site extracted and transferred off site “as dug” to another point of sale or another quarry for processing and sale.
- The internal access road graded down from the east to the lower processing plant site level.
- The silt management / water cleaning system established.
- Sand and gravel extraction from the remainder of the initial works area, processed by the proposed on-site mineral processing plant and sold.
- Planting approximately 120 trees along bridleways WC-625 and WC-626.
- The planting of a woodland block in the north-east corner of the site in Phase 5 together with the strengthening of existing adjacent hedgerows.
- A new public right of way created measuring approximately 2.3 kilometres 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.

- 4.37 Initial works for each phase include the removal of soil and overburden to expose the extractable sand and gravel underneath. The stripped soils would be loaded on to dump trucks for either direct placement in previous extraction areas as part of the progressive restoration or stored temporarily in soil bunds pending their subsequent reuse in the final restoration of the site. Any soil bunds which are to remain in-situ for more than 3 months would be seeded with a floristic meadow mix. Soil bunds would be constructed to a maximum outer slope of 1:3 and an inner slope of 1:2. Topsoil bunds would be a maximum height of 3 metres, subsoil bunds a maximum height of 5 metres and overburden bunds a maximum height of 6 metres. Once the overlying soils and overburden are removed, the exposed sand and gravel would be extracted and removed for processing on-site.
- 4.38 The land would be progressively restored using site derived and imported inert material to agricultural parkland, public access and nature enhancement. The applicant estimates that the western area of the site would be fully restored within 5 years of extraction commencing, and the eastern area being fully restored within 1 year after the cessation of mineral extraction, taking a total of 11 years to complete the whole development (extraction over 10 years, with 1 additional year to complete the remaining restoration).
- 4.39 To restore the site the applicant is proposing to import approximately 600,000 cubic metres of inert material (equating to about 1,020,000 tonnes), importing approximately 60,000 cubic metres of inert material per annum (equating to about 102,000 tonnes per annum). The applicant states that landfilling would involve the construction of a base and sidewall lining to provide engineered containment for receipt of inert wastes. The landfill lining would be completed using suitable imported inert material. Other than soil cover, no engineered capping system would be required for areas of inert landfill. For Phases 1 to 3, inert materials would be conveyed under the bridleway from the plant site, where it would be loaded onto dump trucks and deposited in the quarry void. For Phases 4 and 5, the inert material would be directly deposited in the quarry void by dump trucks.
- 4.40 The restoration scheme includes the provision of an agricultural parkland with the planting of 7.5ha of new acidic rich meadow grassland, hedgerow strengthening and planting and the planting of native woodland blocks. This is illustrated on plans KD LCF 010 and 029, respectively (CD 1.31 and 1.32).
- 4.41 Based on exporting approximately 300,000 tonnes of sand and gravel in HGVs with 20 tonne average payloads, over 275 working days per annum (based upon a 5.5 day working week and allowing for the extended shut-down between Christmas and New Year), an average of approximately 55 loads per day would be required, resulting in 110 daily HGV movements onto the highway.

- 4.42 Dump trucks with a payload of up to 40 tonnes would be used to transport mineral within the site. The total number of onsite dump truck movements per day is anticipated to be between 54 to 72 movements (27 to 36 loads being taken to the processing plant per day).
- 4.43 Based on importing approximately 60,000 cubic metres (102,000 tonnes) of soils and overburden of inert waste in HGVs with 17 tonne average payloads, over 275 working days per annum, an average of approximately 22 loads per day are expected, resulting in 44 daily HGV movements to and from the highway.
- 4.44 Notwithstanding final restoration; the description of works above identifies that there will be major development of the site over 11 years. 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.
- 4.45 Large bunds are used to screen the working site from surrounding viewpoints. Whilst they may be defined as engineering operations with regard to paragraph 150 b) of the NPPF, they reduce openness. The processing plant may be considered a necessary part of minerals extraction, but it also reduces openness. The cumulative effect of these (bunds, haul roads, plant areas and associated activity), in combination with large stockpiles does increase the overall effect on openness.
- 4.46 Effect on Visual Openness in Isolation
The Appellant has not provided an assessment of the effects of the proposal on openness. There are 9 paragraphs discussing the concept of openness in planning policy terms presented within the Planning Statement of the submission (CD1.02) but they do not offer an opinion on the effects on openness, just that the impact of the development is limited by its duration. Similarly, the Appellant's Statement of Case limits its consideration to noting that whilst development would be "*visible, it would not be very visible, due to the topography, proposed temporary soil storage/visual screening bunds, existing boundary walls and proposed planting*". It notes that development would not affect openness of the Green Belt to an extent that it would "tip the balance" to make it inappropriate.
- 4.47 The proposed development relies on the creation of soil storage bunds to reduce the visual impact of development from surrounding key viewpoints; the mitigation benefit from a landscape and visual impact perspective is noted within the Appellant's Landscape and Visual Impact Assessment (LVIA).

Core Document CD3.08 provides details of the individual soil storage bunds associated with the proposed development; noting the use of No.20 bunds during operations, ranging from 6m to 3m in height, save for bund 6 at 0.3m in height.

- 4.48 Bunds 1-5 are to remain in-situ on site from the initial creation of the processing plant area through until its decommissioning to complete restoration. Bunds 1 and 2, at 3m high, are located to the immediate north of curtilage of the dwellings South Lodges and Broom Cottage, and further seek to reduce views into the plant site from the site access. Bund 4, at 3m high, is located to the north of the plant site, to the immediate south of the existing public right of way and seeks to mitigate viewpoints into the plant area from the dwelling known as The Bungalow, and the Lea Castle Equestrian Centre. Bund 3, at between 4m and 5m in height, runs along the entire western extent of the plant area, immediately adjacent to the existing right of way.
- 4.49 A series of photographs have been taken from key views along public rights of way and in proximity to the site. These are included at WCC15. It is concluded that the siting of Bunds 1-4 would reduce views across the site from **Key View A**, to the immediate east of the dwellings on Brown Westhead Park, at the intersection between the existing and proposed public rights of way. It would also erode views eastwards across the new public right of way. The existing view provides a vista extending to the highest land level within the site, the domed land to 82mAOD to the east of the proposed plant area, and the tree cover and chimney of Broom Cottage, to the southeast. The inclusion of the proposed bunds, particularly Bund 3, would substantially reduce the extent of this view eastwards across the site, for the majority of the lifespan of proposed development.
- 4.50 During Phases 1 to 3, the viewpoints eastwards across the site from this key view, would be further restricted, by the siting of Bund 8 (at 5m high) and Bund 10 (at 3m high) during Phases 1 and 2; Bund 12 (3m high) during Phase 2 and Bunds 13 and 16 (both 4m high) during Phase 3. The siting of Bunds 8, 12 and 16, due to their close proximity to rights of way, both permanent and temporary, will remove views eastwards across the site for substantial periods of time during the relevant phases, and erode the views already reduced by lifespan bunds 1-4.
- 4.51 The development will as such have a detrimental impact on the visual openness of the site from its western extents for the lifespan of the development. The impact would not be limited to the receptor viewpoints of occupiers of the dwellings on Brown Westhead Park, but also the users of the existing and proposed public rights of way to the west of the site. The impact on visual openness is considered

to be of significance throughout the lifespan of the development until the decommissioning of the plant area, and of great significance during the working of Phases 1 to 3.

- 4.52 **Key View B** is taken from the public right of way to the north east of the site, looking south westwards, and is considered to be reflective of the general vista experienced from the right of way; from the dwellings at Castle Barns and North Lodges; and from the upper floor windows to the rear of the properties located on Westhead Road, in Cookley. Due to the higher topographic level of the viewpoint, long ranging views across the site are provided, taking in the tree cover afforded to the dwelling known as Four Winds to the immediate south of the appeal site and to the existing access track running from the Bungalow to South Lodges (that form the extent of Bund 3) with the tree cover of the woodland to the west of the site beyond.
- 4.53 Those far ranging views westwards across the site would be eroded by the erection of Bund 3 for the predominant lifespan of development, although this would reduce views of Phases 1 to 2 of the operational works as a by-product of its inclusion. Bund 17, at 3m in height, would be erected prior to undertaking works in Phases 4 and 5. Its depth and location, immediately adjacent to the diverted right of way to the north east of the site, would reduce depth of views from the right of way, from Castle Barns and North Lodges and from the views experienced from dwellings at Westhead Road across the site in a southern and south-western direction across the lifespan of Phases 4 and 5 of the proposal. The impact on visual openness is considered to be of significance throughout the lifespan of the development until the decommissioning of the plant area, and of great significance during the working of Phases 4 and 5.
- 4.54 **Key View C** is a pair of images showing the vista of the appeal site to the north west, north and north east from the existing vehicular access into the site, north west of South Lodges, and the location of the southern relocation of the public right of way. The existing views north eastwards extend to the brow of the land, to the east of the proposed Phase 4 area and northwards to the woodland beyond the Lea Castle Equestrian Centre. To the west, open views are provided across to the woodland adjacent to Brown Westhead Park, and to the higher landform of Wolverley in the distance.
- 4.55 The erection of Bunds 1-3 would block the views from the public vantage point in their entirety to the north east of the site, due to the height of the bunds and their proximity to the right of way. Any views beyond the bunds that could be taken in would be of the plant site, including the processing plant, offices and hardstanding. The view northwards would be reduced to a single aspect, towards The Bungalow, due to the extent and height of Bund 3. This would be further exacerbated during the

works associated with Phases 1 and 2, where the erection of Bunds 9 and 10 (both 3m high) further reduce viewpoints northwards. No screening bund is provided to the east of Phase 3, and so during this period, the visual effects of operations would be experienced by receptors making use of the right of way, together with the occupiers of South Lodges. The impact on visual openness is considered to be of significance throughout the lifespan of the development until the decommissioning of the plant area and across the working of phases 1 and 2; and of great significance during the working of Phase 3.

4.56 Cumulative Effects on Visual Openness

The visual effects of the proposed development on openness of the Green Belt must also consider the cumulative impact on openness created in conjunction with other development. Appendices WCC4 and WCC9 provide the allocation masterplan for Lea Castle Village (as allocated within policy SP.LCV1 of the Wyre Forest District Council Local Plan) and the approved layout for planning consent 19/0724/RESE, forming part of the wider masterplan currently being built out, respectively.

4.57 **Key View D** is taken from the vehicular access junction to serve the Lea Castle Village development, adjacent to Park Gate Road. The view looks westwards across what will be a developed residential and village centre area towards the eastern extents of the appeal site in the distance. Bund 18 is proposed to be erected to the east of the Phase 4 and 5 area, on land set down from the tallest brow of the view and between 4m and 5m in height. The view is representative of that experienced by cars and pedestrians along Park Gate Road, as well as from wider westward views towards the site from surrounding receptors, which will include occupiers of dwellings secured under 19/0724/RESE.

4.58 The current view provides an open westward view across the land either side of Wolverhampton Road, to the brow of the land bordering Phases 4 and 5, and to the tree cover beyond. Bund 18 will restrict views to the tree cover beyond the brow, creating a singular, uniform mass that reduces any perceived openness to the landholding beyond. In combination with the building out of the allocated area on land to the foreground of the view across the same development period, the combined impact on the perceived openness of the Green Belt will be significant across the period associated with Phases 4 and 5 of the proposed works.

4.59 **Key View E** is taken from the dwellings that front the built-out residential development referred to in planning as the Land off Stourbridge Road, the details of which are provided within WCC10. The dwellings located along Stourbridge Road have wide ranging views across the north west and to the north east from a higher vantage point. The view shows the appeal site to the north west, with the brow adjacent to Phases 4 and 5 and tree cover beyond in clear view, with the western extents of the

Lea Castle Village masterplan area to the north east. The combined impact of the introduction of Bund 18 with associated operational movements on the appeal site, in combination with the building out of the Lea Castle Village allocation will, in combination, substantially erode the perceived visual openness of Green Belt from higher vantage points to the south of the site, of which there are a substantial number of residential receptors along Stourbridge Road. The combined impact on the perceived openness of the Green Belt will be of great significance across the period associated with Phases 4 and 5 of the proposed works.

4.60 Overall Effects on Visual Openness

The inclusion of a substantial number of bunds to mitigate for the effects of the proposal on the landscape and visual impact of the area is concluded, as a by-product, to create a change to the sense of openness on receptors (for both residential and recreational uses and/or road users) due to their extent and size; cutting off open views across the site.

4.61 The development is considered to offer a very significant detrimental effect on visual openness from western and southern viewpoints of the site during Phases 1, 2 and 3 of the works, and a significant detrimental effect during the lifespan of development until the plant area is decommissioned.

4.62 The development is considered to offer a very significant detrimental effect on visual openness from north-western viewpoints of the site during Phases 4 and 5 of the works, and a significant detrimental effect during the lifespan of development until the plant area is decommissioned.

4.63 The development is considered to offer a very significant detrimental effect on visual openness, in combination with the allocated development at Lea Castle Village, across Phases 4 and 5 of the development, from wider views of the Green Belt from the east and southeast of the site.

4.64 Further to the visual dimension of harm to openness the proposal provides, the siting of the bunds themselves provide engineered features of incongruity, at odds with the natural landscape of the site, for substantial periods of time; providing a spatial impact on the openness of the Green Belt by way of their siting.

4.65 The appellants conclude, considering the conclusions of *Europa Oil and Gas Ltd*³ (WCC25) (CD12.07) that the duration of development, at 10 years, would be temporary and reversible through
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⁴ *Europa Oil and Gas Ltd v Secretary of State for Communities and Local Government* [2013] EWHC 2643 (Admin)

restoration, and as such there would be no permanent harm. In this instance, it is considered that the substantial use of large bunds, which are otherwise considered to offer a spatial impact by way of their siting, across the site for a period of 10 years would, in combination with development adjacent to the site, offer an intensive impact on the Green Belt at a period in time when the site is considered to have a heightened responsibility in effectively performing its purposes as Green Belt land. Furthermore, the land is not returned to its original form on completion of works, thus reversing impacts; the restoration substantially changes the original landform, offering a reduced visual contribution to wider ranging views in the long term due to a generally lower landform being created in restoration.

4.66 It is concluded therefore that the proposal would offer harm across the lifespan of development to the openness of the Green Belt, with such harm not being offset by the temporary nature of the works, due to a heightened requirement of the land towards Green Belt purposes across that period, nor by a reversal through restoration, as the restoration does not return the land to its natural landform. The lack of returning of the land to its natural landform; in combination with the extent of proposed bunds across the lifespan of development; the extent of works for Phases 4 and 5, which as such require in mitigation a substantial bund to be sited to its east; to the visual detriment of the Green Belt, in combination with other development from far ranging views, affect openness to the extent that it “tips the balance” to make it inappropriate development.

4.67 Taken in context the overall effect of the development is of significant harm to the Green Belt by loss of openness.

4.68 Relationship to Green Belt purposes

The appeal site is located within North West Worcestershire “Strategic Corridor” for solid sand and gravel and silica reserves as identified within the Minerals Local Plan. Whilst all of the Corridor is located within the West Midlands Green Belt, this does not mean that it is all of equal importance.

4.69 The appeal site sits in its entirety within land parcel N7 of Green Belt reviews Parts I and II (Appendices WCC1 and WCC2) undertaken by Wyre Forest District Council as part of their Local Plan Examination submission. The Corridor area consists of 26 different land areas that are considered to provide differing and distinct contributions to the Green Belt by the authors of the review.

4.70 Whilst the appeal site is contained within land parcel N7; the adjacent Lea Castle Village development sits within land parcel NE2, and land south of the site off Wolverley Road sits within parcels N5 and N6.

The land parcels are concluded by the review to contribute differently to the purposes of the Green Belt.

- 4.71 The appeal site is defined by the review as directly contributing to the prevention of both the incremental encroachment of development into the open countryside and to the sprawl of Kidderminster along the A449; as such having heightened purposes in relation to two of the five purposes of Green Belt land.
- 4.72 I agree with the conclusions of the review. The site sits at its narrowest within a 1.3 kilometre gap between the settlements of Kidderminster and Cookley. Views from the public right of way within the appeal site, adjacent to Castle Barns, provide clear views of Kidderminster to the south, on higher land, and Cookley to the north. The two settlements do not appear visually distinct, with the role of the appeal site in providing visual separation further undermined by the impact of the mass of the built development in combination with individual dwellings located across Wolverley Road, in Green Belt land parcels N5 and N6, which creates further visual encroachment towards the appeal site.
- 4.73 The appeal site protects against urban sprawl from viewpoints into Kidderminster from the A449 Wolverhampton Road as it approaches the town from the north, with the distinct lack of development to the north of Wolverley Road by comparison to the south of it serving as a visual barrier to sprawl from this vehicular gateway into the town.
- 4.74 From higher viewpoints, looking northwards and north eastwards across the site, the site provides mitigation to avoid visual coalescence between the villages of Cookley and Wolverley; providing a visual perception of openness between the two settlements.
- 4.75 The site thus provides a strong and direct contribution towards parts a) and c) of Paragraph 138. Given the appeal site's location, as the predominant landholding between Kidderminster, Wolverley and Cookley, it provides for a greater contribution in isolation to the purposes of the Green Belt than other land parcels within the Corridor. When considered in the context of the adjacent land parcel N7 being built out in its entirety to deliver the Lea Castle Village masterplan, its contribution to the purposes of the Green Belt is heightened further.
- 4.76 Insofar as it is concluded that the tipping point of development has been exceeded by the harm caused by the development to the openness of the Green Belt, it is determined that the appeal scheme is inappropriate development. Furthermore, the development would fail to check the

unrestricted sprawl of built-up areas and would not assist in safeguarding the countryside from encroachment, and so would conflict with two of the purposes of the Green Belt.

4.77 Taking into consideration the appeal submission and the matters agreed in common ground between the appellants and the Council, I now consider whether the appeal scheme would result in any other harm and then have regard to other considerations, so that a balancing exercise can be undertaken to determine whether very special circumstances exist.

4.78 **Amenity Issues**

Paragraph 185 of the NPPF sets out that *“planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should: a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life; b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason; and c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation”*.

4.79 With regards minerals development, Framework paragraph 210 part f) requires policy to *“set out criteria or requirements to ensure that permitted and proposed operations do not have unacceptable adverse impacts on the natural and historic environment or human health, taking into account the cumulative effects of multiple impacts from individual sites and/or a number of sites in a locality”*.

4.80 Minerals Local Plan Policy MLP 28 identifies that development should *“not give rise to unacceptable adverse effects on amenity or health and well-being”* and that a *“level of technical assessment appropriate to the proposed development will be required to demonstrate that, throughout its lifetime and taking into account the cumulative effects of multiple impacts from the site and/or a number of sites in the locality, the proposed development will not cause unacceptable harm”*.

4.81 Waste Core Strategy Policy WCS 14 states that development should *“not have unacceptable adverse impacts on amenity”* and that *“cumulative effects must be considered”*. The policy notes that details of any mitigation or compensation proposals must be included and *“where there will be unacceptable adverse impacts on amenity, proposals will only be permitted where it is demonstrated that the benefits of the development at the proposed site clearly outweigh any unacceptable adverse impacts”*.

- 4.82 Both local and national policy therefore identify that minerals extraction cannot be supported without confirmation that the proposal would not have an unacceptable adverse impact on amenity, taking into account cumulative effects.
- 4.83 The appeal scheme is supported by an Environmental Statement (“ES”) prepared following the undertaking of a series of technical reports, that include, but are not limited to assessing the potential amenity impact of development on adjacent receptors which include, but again are not limited to residential dwellings within the locality and Heathfield Knoll School & First Steps Nursery (“The School”). The technical reports include assessment of impact on amenity of the dwellings and The School in relation to matters associated with noise and dust impacts, and detail the use of mitigation measures, including screening bunds, within the technical reporting and within the Appellant’s Landscape and Visual Impact Assessment.
- 4.84 The ES included a statement on Cumulative Impact in Chapter 22 of its original submission, the conclusions of which were updated in a revised Non-Technical Summary in July 2021. Both the original cumulative assessment and its update refer to technical reporting in relation to dust and noise impacts prepared prior to the application’s submission in December 2019, in drawing its conclusions that the proposal would offer no cumulative impact.
- 4.85 Noise Impacts
As noted in the Committee Report (CD10.01), the PPG is the most up to date Government Guidance relating to noise emissions associated with mineral extraction. It recommends that noise levels for normal daytime operations (07:00 to 19:00 hours) should not exceed 55dB(A) LAeq, 1h (free field), and a higher limit of up to 70dB(A) LAeq 1h (free field) at specified noise sensitive properties for noisier, but temporary operations, such as soil stripping, the construction and removal of baffle mounds, soil storage mounds and spoil heaps, construction of new permanent landforms and aspects of site road construction and maintenance, but for only up to 8 weeks a year. This is to facilitate essential site preparation and restoration work and construction of baffle mounds where it is clear that this would bring longer-term environmental benefits to the site or its environs (Paragraph Reference IDs: 27-021-20140306 and 27-022-20140306).
- 4.86 The ES and accompanying Noise Assessment Report (CD1.07) considered the impacts of noise on the nearest sensitive receptors, which are the residential properties closest geographically to phases of

site operations (Broom Cottage, South Lodges, the dwellings on Brown Westhead Park, The Bungalow, Keepers Cottage and Castle Barns) and the adjacent School.

4.87 The Noise Assessment Report concludes that the calculated site noise levels sit within the recommended noise limits for the operations at those nearest receptors, to accord with the requirements set out in the PPG for both normal daytime and temporary operations. However as noted in the tables below, the noise levels are close to, or on the limits for receptors, and rely therefore on the proposed mitigation measures being implemented effectively. These include construction of soil storage/noise attenuation bunds, also used to provide visual screening from operations.

Table 1: Normal daytime operations

Receptor	Calculated Site Noise Level – Normal Daytime Operations (dB LA90eq, 1-hour free field)	Recommended Site Noise Limit – Normal Daytime Operations (dB LA90eq, 1-hour free field)
Broom Cottage	51	53
South Lodges	54	55
Heathfield Knoll School	53	55
Brown Westhead Park	45	46
The Bungalow	45	45
Keeper's Cottage	46	49
Castle Barns	48	51

Table 2: Temporary operations noise impacts

Receptor	Calculated Site Noise Level - Temporary Operations (dB LA90eq, 1-hour free field)	Recommended Site Noise Limit – Temporary Operations (dB LA90eq, 1-hour free field)
Broom Cottage	68	70
South Lodges	70	70
Heathfield Knoll School	60	70
Brown Westhead Park	63	70
The Bungalow	66	70
Keeper's Cottage	54	70
Castle Barns	58	70

4.88 In consultation, Worcestershire Regulatory Services concluded that the measured noise levels and calculated predictions are “robust” and, subject to conditions limiting operational hours in response to the “concerns with regard to the overall amenity of the area”, the proposal, in isolation, would not have an unacceptable noise impact on receptors.

4.89 It is concluded therefore, that in isolation and with mitigation measures implemented including screening bunds, the operations would offer a noise impact that sits within the upper acceptable levels of noise limit to the noted receptors.

4.90 Consideration of amenity impacts therefore is required to turn to an understanding of whether any other environmental impacts offer amenity harm in isolation, or when combined either onsite or cumulatively with development elsewhere.

4.91 Outlook Impact

The noise survey identifies the need to make use of soil screening bunds adjacent to the landholding of receptors to act as noise mitigation. The specification of the bunds and the consideration of their impact on the outlook afforded to the individual receptors is considered below.

Receptor	Bund No.	Height (m)	Distance from receptor (m)	Lifespan of bund	Considered Impact on outlook
Broom Cottage	2	3m	Circa 40m from dwelling, 20m from curtilage	Throughout development and eventually used to restore Phase 5.	Given orientation of outlook from the single storey dwelling, its separation distance from the bund and eastward facing rear garden, outlook impact is considered negligible.
South Lodges	1	3m	Circa 40m from dwelling, 3m from curtilage	Throughout development and eventually used to restore Phase 5.	Views from upper floor rear windows will look beyond the bund and onto plant area; views from ground floor windows are a sufficient distance away to be affected by outlook given sizable barns that sit between the dwelling and the bund. Negligible impact.
	14	4m	Circa 30m from dwelling, 12m from curtilage	Throughout extraction of Phase 3 then used in restoration	The bunds location and height, in combination with the open views to Phase 3 provided to the dwelling adjacent to the bund, will offer harm to the visual outlook afforded to the dwelling. Moderately detrimental impact.
Heathfield Knoll School	15	3m	Circa 55m from Schools curtilage	Throughout extraction of Phase 3 then used in restoration	The separation distance between the bund and the school curtilage, the topographical difference, the volume of woodland screening, roadway and walled boundary mean that there is no visual relationship of note between the school and the bund. Negligible impact.
Brown Westhead	8	5m	Circa 38m at its closest	In place for Phase 1,	Given the topographical difference in land heights, and the relatively open views

Park			distance to curtilage, 65m to rear elevation of dwellings.	partly in place for Phases 2 and 3. Used to restore Phases 1 and 3.	experienced from the rear of the dwellings eastwards across the Phase 1 area, the 5m bund will have a detrimental impact on outlook, restricting expansive views through the woodland from rear gardens that currently exist. Moderately detrimental impact.
The Bungalow	3	4-5m	Circa 94 m from side elevation of dwelling.	Throughout development and eventually used to restore Phase 5.	The size and extent of the bund would restrict longer distant views to the south from the dwellings curtilage, but this is considered to offer a negligible outlook impact due to separation distance.
	4	3m	Circa 105m from rear elevation.	Throughout development and eventually used to restore Phase 5.	The size and extent of the bund would restrict longer distant views to the south east from the dwellings curtilage, but this is considered to offer a negligible outlook impact due to separation distance.
	7	6m	Circa 30m from front elevation	In situ in Phase 1, then used to restore Phase 1 and 2.	The size of the bund and its separation distance to the front elevation of the dwelling, including windows to primary spaces, would offer a detrimental impact on outlook considered to be significant and an overbearing impact considered to be significant.
Keepers Cottage	17	3m	Circa 160m from front elevation	In situ for Phases 4 and 5 and then used in final restoration.	The bund is considered to offer a negligible outlook impact due to separation distance.
Castle Barns	17	3m	Circa 50m from rear elevation	In situ for Phases 4 and 5 and then used in final restoration.	The size of the bund, the interrelated topographic of the dwelling and the appeal site and its separation distance to the rear elevation of the dwellings, including windows to primary spaces, would offer a detrimental impact on outlook considered to be significant and an overbearing impact considered to be significant.

4.92 The proposed use of screening bunds to mitigate, in part, the noise impacts of development is concluded to create a significant impact on outlook and an overbearing impact on amenity on a series of dwellings at Castle Barns, and on the dwelling known as the Bungalow. The impacts would extend to significant periods associated with the relevant phase excavation, and subsequent restoration periods. The mitigation is also considered to offer a moderate impact on the outlook of the properties located on Brown Westhead Park, adjacent to Phase 1, and to South Lodges, with the impacts taking place over a longer period.

4.93 Dust Impacts

A Dust Impact Assessment prepared by Vibrock Limited (CD1.08) dated 18 September 2019 forms part of the technical submission. The submission assessed the likely dust risk at the nearest sensitive receptors including Brown Westhead Park and Playing Fields, The School, statutory and non-statutory designed wildlife sites, and the residential properties of No.1 and No.5 Brown Westhead Park, South Lodges, Broom Cottage, Four Winds, No.10 Castle Barns, and the Bungalow. It predicted a negligible risk and negligible magnitude of effect at all receptors, except No.10 Castle Barns, which it predicts a low risk and slight adverse magnitude of effect, and the Bungalow in which it predicts a medium risk and moderate adverse magnitude of effect.

4.94 In respect of No.10 Castle Barns, it was concluded that the closest approach separation distance at this residential property would be approximately 121 metres to the north-east of Phase 5. The assessment states that winds from the west, 'west-south-west' and 'south-south-west' would blow from the site towards No.10 Castle Barns. The property would be shielded from the quarry by proposed soil storage bunds around the quarry working area. A total of 11 dry windy working days are predicted, representing between 5% and 12% of all dry windy working days. The Assessment, therefore, categorizes the dust impacts upon No.10 Castle Barns as "intermediate" (between 100 metres to 200 metres) from the source of dust and with the potential for dusty winds classed as "moderately frequent".

4.95 The closest approach separation distance at the Bungalow to the proposed development area was measured at approximately 77 metres east of Phase 1. The Dust Impact Assessment states that winds from the 'north-north-west', 'west-north-west' west, 'west-south-west' and 'south-south-west' would blow from the site towards the Bungalow. The Bungalow would be shielded from the quarry by proposed soil bunds around the quarry working area. The Assessment predicts a total of 14 dry windy working days, representing between 12% and 20% of all dry windy working days. The Assessment, therefore, categorizes the dust impacts upon the Bungalow as "close" (less than 100 metres) to the source of dust and with the potential for dusty winds classed as "frequent".

4.96 The Dust Impact Assessment considers that if dust mitigation and control measures were effectively implemented, this would mitigate any potential dust impact at No.10 Castle Barns and the Bungalow. The report recommended a series of mitigation measures to address dust impacts.

4.97 In-combination effects

The ES considers in-combination effects within Chapter 22, but does not provide a position with regards the specific in-combination effects of the proposed works on individual receptors adjacent to the site. In consultation, Worcestershire Regulatory Services provided consultation responses on matters associated with dust and noise, but in isolation of each other and not in relation to in-combination effects on individual receptors.

4.98 The technical reporting identifies that, in isolation, the proposed works would have an impact on a number of residential dwellings, most notably at Castle Barns and the Bungalow, with regard to noise and dust, sufficient to require mitigation measures. These measures include the erection of sizeable screening bunds. It is not contested that the bunds provide sufficiently robust mitigation to alleviate noise and dust impacts to inside acceptable thresholds. However, in relation to Castle Barns and the Bungalow, the bunds themselves are considered to offer measurable harm to outlook and overbearing impacts of significance to the properties across the lifespan of the erection of the bunds. It is concluded therefore that the proposed development, in isolation, provides a significant impact on amenity on residential receptors for periods of time during operational works on site.

4.99 In order to reasonably determine the weight of harm that can be applied to such amenity impacts, there is firstly a need to determine whether such amenity harm is exacerbated by any cumulative harm that will be created across the lifespan of the proposed works; in accordance with the expectations of the Development Plan.

4.100 Cumulative Impacts

Regulation 4 (2) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 ("the EIA Regulations") states that the EIA must identify, describe and assess in an appropriate manner, in light of each individual case, the direct and indirect significant effects of the proposed development on a number of factors this includes the interaction between the factors of population and human health, biodiversity, land, soil, water, air and climate, material assets, cultural heritage and the landscape. Schedule 4, Part 5 states in relation to information for inclusion within Environmental Statements, this includes "*the cumulation of effects with other existing and / or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources*".

4.101 The original ES considered the cumulative impact of development in relation to the consents for the redevelopment of Lea Castle Farm Hospital (WCC5) (CD12.08) and the Land off Stourbridge Road (WCC10) (CD12.10) concluding that in both instances, the separation distance between the appeal site

and the developments were such that the impact for simultaneous cumulative effect was considered negligible. There is nothing within the assessments that would lead me to draw an alternative conclusion.

4.102 Part of the consideration of distance having a consequence for impacts, in relation to dust, involves the guidance provided by the Institute of Air Quality Management (IAQM) "Guidance on the Assessment of Mineral Dust Impacts for Planning", 2016 (CD12.24) which states that "*adverse dust impacts from sand and gravel sites are uncommon beyond 250m*". In response to objections raised on dust impacts from interested parties, the Appellant's agent confirmed via email on 21st September 2021 (CD7.02) that the proposal would offer no measurable impact in conjunction with the Lea Castle Hospital or Stourbridge Road sites, stating:

"In terms of the assessment locations contained within Vibrock's report, a range of the closest receptors to the site have been identified. These were the receptors with the highest potential for dust impact of which the Vibrock report concluded, it was unlikely that any significant decrease in local air quality will occur due to the proposed development at Lea Castle Farm Quarry. The development at the former Lea Castle Hospital site is at least 570m from the proposed quarry development, which is significantly distanced from site operations than the receptors assessed within the Vibrock report. Extensive research and study at other quarries has shown that the likelihood of dust impacts occurring at distances over 100m from a site is very low as the majority of fugitive dusts are likely to be greater than 30µm in size and will deposit easily within 100m of the source. The Institute of Air Quality Management (IAQM) 'Guidance on the Assessment of Mineral Dust Impacts for Planning', 2016, states that "adverse dust impacts from sand and gravel sites are uncommon beyond 250m. In terms of consideration of other residential developments, Appendix 4 gives consideration of potential impact to housing development on Stourbridge Road. Therefore, on this basis, we consider that the assessment of air quality impacts has been sufficiently addressed and see no issues in terms of the points raised by the Action Group".

4.103 Lea Castle Village Masterplan (WCC4) (CD12.12) was allocated under Wyre Forest District Local Plan Policy SP.LCV1 in April 2022 and allocates development adjacent to the A449 within 250m of Phases 4 and 5 of development, consisting, in part, of the proposed "Village Centre", residential dwellings and a primary school. Whilst the original ES, and the non-technical summary (NTS) update of July 2021 (CD5.16) acknowledge the intention of an allocation for the Lea Castle Village by Wyre Forest District Council, no consideration of its cumulative impact with the appeal site, on existing and future receptors was considered, despite part of the site being located within the 250m threshold for dust impacts.

- 4.104 The Lea Castle Village allocation was secured by way of the adoption of the Wyre Forest District Local Plan in April 2022, prior to the determination of the application for the appeal site. The allocation prescribes the extents of development, its location and its use classes. Taking into account the requirements of Regulation 4(2) of the EIA Regulations, there is a requirement to assess the cumulative impact of developing out of the allocation site in conjunction with operational development of the appeal site, so as to be able to determine the potential impacts on the surrounding environment, including on the amenity of existing and future occupants adjacent to both sites.
- 4.105 The Appellant's provided no additional technical assessment that took into account the impact of the cumulative operations on surrounding receptors; relying on their original dust and noise impact assessments to draw a conclusion that the proposal offers no harm to amenity. Those assessments have not assessed the impact of development on the environment in combination with the operations at Lea Castle Village. The limit of consideration by the Appellant of the matter is captured within the revised NTS, in which it is noted that the appeal scheme would be temporary and less than 10 hectares of land would be utilised at any one time; concluding that it is *"likely that all three developments [Lea Castle Hospital/Lea Castle Village/Kidderminster Eastern Extensions] could be progressively constructed and/or operational in the same time"* and that *"Environmental aspects of noise, dust, vibration, soils, air quality, cultural heritage, soils and water matters are considered to be of low cumulative effect and of an individual site-specific nature"*. No additional evidence was provided to draw this conclusion.
- 4.106 It has been concluded that the appeal scheme would offer a degree of amenity harm, of significance, to some residential dwellings adjacent to the site for specific periods during the works. Insufficient information has been provided in relation to cumulative impacts to determine whether this amenity impact to residential receptors is exacerbated by the intended developing out of the Lea Castle Village site across the same operational period.
- 4.107 Insufficient information has been provided in relation to cumulative impacts to determine whether the intended developing out of the Lea Castle Village site across the same operational period offers any further cumulative impact on the adjacent Heathfield Knoll School and First Steps Nursery, sufficient so as to create a harmful impact on amenity.

4.108 In the absence of this information, the proposal does not accord with the requirements of the EIA Regulations; is contrary to Minerals Local Plan Policy MLP 28 and Waste Core Strategy Policy WCS 14 and fails to accord with the expectations of the Framework.

4.109 It is further concluded that the proposed development offers significant harm to the amenity of residential dwellings at The Bungalow and Castle Barns, contrary to policies MLP 28 of the Minerals Local Plan, policy WCS 14 of the Waste Core Strategy and policies SP.16 and SP.33 of the Wyre Forest District Local Plan and the Framework.

4.110 **Whether Very Special Circumstances Exist**

Substantial weight is attached to any harm to the Green Belt by reason of inappropriateness. Very special circumstances will not exist unless the potential harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Case law⁵ suggested that the special circumstances must be special in the sense of out of the ordinary, meaning that they cannot be just a consequence of the preferred working approach of mineral operators, although they do not in themselves have to be rare or uncommon.

4.111 From their Statement of Case it is the Appellant's opinion that VSC exist from:

- The need for the release of new mineral reserves to ensure a "*steady and adequate supply of aggregates*" and that great weight that is attached to mineral extraction;
- The contribution of the scheme to the Council's landbank, which is currently not in compliance with NPPF paragraph 213;
- The sustainability of the location with regard to the logistical marketplace, the spread of supply throughout the County and the potential inert waste that could be transported to site from surrounding residential development sites;
- The economic benefit of providing jobs, providing direct and indirect economic contributions to the local economy and to the economy through levy and taxation; and
- Restoration benefits from the site, including a significant increase in net biodiversity gain.

4.112 Paragraph 211 of the NPPF makes clear that great weight should be given to the benefit of minerals extraction and Paragraph 213 requires the Council to maintain a landbank of 7 years for sand and gravel. The proposal directly accords with both requirements, and as such, *significant* beneficial weight should be applied to the contribution of the site in this regard. However, the Council's landbank position has markedly improved since the original decision. There is a very reasonable likelihood that

⁵ Wychavon DC v Secretary of State for Communities and Local Government and Butler [2008] EWCA Civ 692

their landbank will exceed 7 years for sand and gravel on the basis that extant applications, with the Council for determination, are approved. The supply issue is, as such, less acute than at the time of determination of the application and this does, in my opinion, create a distinction from the *very significant* beneficial weight that would have applied at the point of determination of the original application.

- 4.113 Whilst it is acknowledged that the appeal site is located to the north of the County, thus in principle would serve a different market place than other quarries located to the southern extents of the County; the marketplace is the same as that responding to the mineral secured from the permission at Sandy Lane Quarry, and in the process of being determined at Pinches Quarry; with both sites located within the Bromsgrove area, and as such serving the same northern marketplace. Therefore, whilst the geographical spread of resources is a benefit, there is not an acute issue for location of supply as a proportion of the landbank available. As such, *moderate beneficial* weight is applied to the consideration.
- 4.114 There is neither a confirmed agreement in place with an inert waste supplier from surrounding residential development sites that informs this appeal, nor is there confirmation that any development in the surrounding area has a need to export inert waste from their sites. As such, *negligible* weight is afforded to the matter.
- 4.115 Paragraph 211 of the NPPF requires great weight be applied to the benefits of minerals extraction, including to the economy. The proposal provides the delivery of 11 full-time equivalent jobs, the direct and indirect benefits of which are considered to be a modest contribution to the socio-economy. In combination with the great weight required to be applied to the proposal's impact on the economy, the benefits are concluded to be *significant*.
- 4.116 Whilst the proposal includes restoration of the appeal site; the restoration itself does not return the site to its former landform, which is concluded to be of detriment to the site by comparison to the existing natural landform, balanced out only by the landscape design sought to be implemented within it. The restoration of the site following completion of the minerals excavation is a requirement of policy rather than a direct benefit secured by the proposal. As such, *negligible* weight is applied to the delivery of a restored site.
- 4.117 The restoration demonstrates that it would secure an 87.21% net gain for biodiversity, which is considered to be a significant benefit of the scheme, in principle. However, the consultation response

from the County Ecologist within the application identified that a number of proposed habitats have been identified with 'high' or 'very high' difficulty for creation, with a time to target condition of 30 plus years. Both the extent of time taken to deliver the benefit and the risks associated with achieving it, tempers the weight of benefit that can be applied to it as a consideration. As such, *moderate beneficial* weight is afforded to the matter.

- 4.118 It is expected that the Appellant should bring forward a scheme of working the mineral that reduces the harm to Green Belt by preserving, so far as practicable, its openness. The method of working and the use of bunds to mitigate such methods in this instance are concluded to tip the balance to make the development inappropriate. Furthermore, the proposal would not assist in checking sprawl or safeguarding the countryside from encroachment, and so would conflict with two of the purposes in the Green Belt and be contrary to policies MLP 16 of the Worcestershire Minerals Local Plan and DM.22 of the Wyre Forest Local Plan. This harm to the Green Belt should, by definition, be given substantial weight.
- 4.119 It has been concluded that the appeal scheme has presented insufficient information to conclude that the cumulative impacts of the scheme, in conjunction with adjacent development, are sufficiently mitigated for to appropriately address any detrimental impacts on the amenity of adjacent residential receptors and The School. In the absence of such information, the scheme is concluded to be contrary to policies MLP 28 Worcestershire Minerals Local Plan and WCS 14 of the Waste Core Strategy, and to offer *significant* harm to receptor amenity.
- 4.120 I conclude that the harm by reason of inappropriateness, and any other harm, is not clearly outweighed by other considerations, and the very special circumstances necessary to justify the development do not exist.

5.0 Conclusions

- 5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) and Section 70(2) of the Town and Country Planning Act 1990 require that planning applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise. Further for the purpose of this section, I adopted a scale relevant to harm/benefit referred to in Chapter 4, namely: very substantial, substantial, moderate, limited, negligible.
- 5.2 Minerals excavation should be given great weight; and the proposal would contribute to the Council's Sand and Gravel Landbank position, which currently sits below 7 years. Due to the reasons outlined in Chapter 4, namely the Council's improving landbank and there being a reasonable expectation that the shortfall of it will be addressed, the benefit applied to the consideration is substantial, not very substantial.
- 5.3 Employment provision and other operational aspects of the development would make a moderate but nonetheless significant contribution to the economy. The scheme would have some substantial benefits for biodiversity in the long term, subject to a number of high risk aspects of the restoration scheme being successful delivered across the long term; the risks of which limit the benefits to moderate in planning balance.
- 5.4 The harm I have identified from the appeal scheme to the Green Belt should, by definition, be given substantial weight. In addition, I conclude that the appeal scheme would have an adverse cumulative impact on the amenity of adjacent residential receptors and on a local school and nursery, in part due to lack of technical evidence in the appellants submission to determine that such potential harm is sufficiently mitigated. Due to the volume of receptors, this should be given substantial weight.
- 5.5 I consider that the harm to the Green Belt along with the harm to amenity in the area is not clearly outweighed by the benefits of mineral extraction, along with the contribution the appeal scheme would make to employment provision, the economy and biodiversity. I consider that the harm by reason of inappropriateness, and any other harm, is not clearly outweighed by other considerations, and the very special circumstances necessary to justify the development do not exist. I find that the appeal scheme would be contrary to national Green Belt policy set out in the NPPF.

- 5.6 I do not conclude that the development could be made acceptable through the use of planning conditions or planning obligations and conclude that the scheme is at odds with the NPPF when taken as a whole.
- 5.7 I therefore conclude that the Inspector should be invited to dismiss the appeal.

Appendix A – Case Law Reference

In his Post-Case Management Conference Note, the Inspector identifies that for relevant appeal decisions and judgments “each must be prefaced with a note explaining the relevance of the Decision to the issues arising in the current Inquiry case, together with the propositions relied on, with the relevant paragraphs flagged up”. I have provided the required details below.

1. Judgment, Mr Justice Burton Leicestershire County Council v Secretary of State for Communities and Local Government and UK Coal Mining Limited [2007] EWHC 1427 (Admin)

I do not refer specifically to the Judgement within my proof, however at paragraph 41, a four stage overview that was defined as appropriate to review cumulative impacts of development, including impacts that on their own may not be objectionable but as one of “one, two, three of four features” that may be close to objectionable, in their totality, become objectionable, was used as a basis for reviewing the potential for cumulative impact in this instance.

2. Judgment, R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant) [2020] UKSC 3

Paragraphs 22-26 are referred to. *Samuel Smith* concludes that there is not a clear distinction between openness and visual impact; it is a reasonable expectation that in assessing openness decision makers should take into account the likely visual impacts of development on the openness of the Green Belt. It is reasonable to assume that in assessing openness, the decision maker should determine whether the proposal offers any visual or spatial effects on the openness on the Green Belt, and whether such effects are likely to be harmful or benign.

3. Judgment, Turner v Secretary of State for Communities and Local Government and East Dorset Council [2016] EWCA Civ 466

Paragraphs 14, 15 and 16 of *Turner* are referred to in considering the concept of openness. Turner determined that the concept of openness of the Green Belt “is not narrowly limited to the volumetric approach suggested by [counsel]. The word ‘openness’ is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs ... and factors relevant to the visual impact on the aspect of openness which the Green Belt present.

4. Judgment, Timmins and A W Lymm Limited v Gedling BC [2014] EWHC 654 (Admin)

I do not refer specifically to the Judgement within my proof, however I have given consideration to the reference within it to the matter of a distinction between openness and visual impact and how such distinction could apply.

5. Europa Oil and Gas Ltd. v Secretary of State for Communities and Local Government [2013] EWHC 2643 (Admin)

Paragraphs 67 and 68 are referred to in the consideration of the temporary nature of minerals works and the reversibility of their impact. Ouseley J noted the special status of mineral extraction under Green Belt policy, stating that a factor that affects appropriateness, the preservation of openness and purposes of the Green Belt is “is the duration of development and the reversibility of its effects.....Minerals can only be extracted where they are found”. He also made clear that it is nonetheless for the decision maker to determine the effect on Green Belt openness.

6. Wychavon DC v Secretary of State for Communities and Local Government and Butler [2008] EWCA Civ 692

Paragraphs 16 to 36 are referred to in the consideration of what constitutes very special circumstances. The case determines special circumstances must be special in the sense of out of the ordinary, meaning that they cannot be just a consequence of the preferred working approach of mineral operators, although they do not in themselves have to be rare or uncommon.