

IN THE MATTER OF
LEA CASTLE FARM, WOLVERLEY ROAD,
BROADWATERS, KIDDERMINSTER, WORCESTERSHIRE

PLANNING APPEAL REF: APP/E1855/W/22/3310099

CLOSING STATEMENT
ON BEHALF OF THE R6 PARTY

I. INTRODUCTION

1. This is a site which is precious to local people. It is steeped in history, and, this week we have heard from a large numbers of those individuals - each one with a story to share about what the Appeal Site means to them or a concern to raise on any one of a large number of issues (air quality, dust, noise, traffic to name but a few). It is eminently clear that this is a landscape which is far beyond the ‘ordinary’. We have heard how the Site is a ‘haven of peace and tranquillity’.¹

2. Sir, you may be wondering why that is important; how that helps you to make a decision on this Appeal. This is not a site, isolated from populations, unused by local people. Quite the opposite is true: we have heard that it is a ‘highly permeable’ Site.² It is well used.³ That is important, from a Green Belt point of view, in assessing the impacts on openness (both from a spatial and visual point of view). It is also important for assessing landscape impacts more broadly. It is significant too from the point of view of assessing amenity impacts (air quality, noise, dust, transport). We will come on to why that matters – in planning terms - in due course.

¹ Karen Anderson, Interested Party

² Accepted by all Appellants witnesses

³ LT XX.

3. In drawing the Rule 6 party's case together, ultimately, this Appeal boils down to (1) a question of whether or not the appeal proposal is acceptable development in the Green Belt and (2) whether or not it is an acceptable development at all (in planning terms). The latter is not *only* to be addressed by reference to 'standards' above and beyond which there is deemed to be a 'significant adverse impact'⁴. Amenity impacts are important considerations in that regard too.
4. We will show too, how the impacts of the PRoW are *unacceptable* during operation,⁵ and represent hardly any improvement during restoration. Moreover, the restoration scheme delivers little – *if any* benefit from what is currently on-site. The landform would be much lower. The pocket parks are '*miniscule*' (accepted by LT). It is, even on the Appellant's case 'similar to what is there already'⁶. It is *remarkable* is that these from a part of the 'very special circumstances' case that the Appellant makes at all. There would be an adverse effect on local amenities (not challenged by the Appellant). The economic benefits, particularly on a local level, are completely overblown. They are hardly special, let alone 'very special', individually, or collectively.
5. Of course, there is a 'need' for sand. The NPPF makes this clear. But that does not mean development at all costs – with unacceptable impacts. It is important to note too, the planning context of a Minerals Local Plan ("MLP") where the allocations Development Plan Document ("DPD") is progressing, and with applications afoot to seek to rectify the need position. That all goes to how pressing the need is. Moreover, the 'need' for the inert material deposition is severely doubted. In any event, there is a local plan process forthcoming which will grapple with these difficult questions of planning having regard to need, and the range of other constraints which will be assessed through the plan-making system.
6. Sir, the question that you have to determine is whether the Appeal should be allowed to jump ahead of that process, and permit the winning and working of sand in the confines of a locally significant heritage landscape, exceedingly close to residential properties to the north (the Bungalow, the Lea Castle Farm Cottages), extremely sensitive receptors in the form of Heathfield Knoll School ("HKS") on the immediate

⁴ See the tests in the PPG.

⁵ RH in EiC, and many points conceded on the specific reasons for why it was unacceptable by LT in XX.

⁶ LT XX.

southern boundary, and nestled between the towns of Wovlerley and Cookley. Does that really constitute sensible planning? Is it really necessary to take that risk?

7. That is a fundamental position from which to start, not least given that you will, in due course, be asked to consider the proposition that minerals should be worked where they are found (and the R6 party do not resile from that). You will be asked to make findings that what follows from this being a windfall site in an ‘area of search’ is that permission should follow – and these Closing submissions seek to show why that is **not** the case.
8. We start with the question of ‘openness’. Plainly, that issue has been expertly navigated by Worcestershire County Council (“WCC”) and, to that extent, the R6 party largely adopt the position that has been advanced through the evidence of Mr Whitehouse and the Cross examination of Mr Furber, and Mr Toland. We do not rehearse that evidence in the interests of brevity: though many of the points made by the Council should be equally adopted as part of the Rule 6 party’s case.

II. OPENNESS

9. Green Belt benefits are afforded amongst the highest protections in land-use planning. We start then with the purposes of the GB, and the extent to which the Appeal Scheme harms those purposes in the R6 Party’s view:
 - a. On (a), the Appeal site is in the context of Kidderminster, the administrative capital of the Wyre Forest. Plainly, when considered locally, it can be the case that it is in the context of a large built-up area.⁷
 - b. On (b), assisting neighbouring towns from merging into one another, it is clear that the site has, historically, played an important role in keeping the neighbouring settlements of Cookley and Wolverley from merging into one another.
 - c. On (c), plainly there *will* be encroachment into the countryside. There will be built form on what was previously open countryside.
 - d. On (d), the setting and special character of historic towns is of central importance to the R6 Party’s case. There is a clear delineation of the historic parkland, it is separated by two significant gatehouses. Egress through one

⁷ TP EIC.

gatehouse means that one ends up in Cookley, and exit through the other results in the approach to Wolverley. The Site is enveloped too by a historic wall – which features in the annual ‘round the wall’ race.⁸ This is a Site which has been of *central importance* to the setting and special character of both towns, settlements which were built through the iron industry⁹. At no point have the Appellants sought to dispute any of the historical characteristics of the Site. That, Sir, is an important place from which to start.

10. The R6 party, largely adopts the evidence put forward by Mr Whitehouse on behalf the Council on the spatial and visual aspects of openness, save that it is salient to add the following points.

Spatial

11. The Appeal Site is surrounded – or is likely soon to be surrounded on all sides by built development. To the north is Cookley, to the Southwest is Wolverely, to the south is Kidderminster. It is bounded by built development of Sion Hill (which, it is noted, has been built out since the Green Belt Review was undertaken). There is soon to be built form to the East on the Lea Castle hospital site. That serves only to magnify the importance of the Appeal Site in fulfilling the Green Belt purposes. The cumulative impacts of this development **must** have an impact in spatial terms.

Visual

12. Mr Partridge helpfully highlighted the visual context in which Appeal Site sits. It is a landscape defined by its rolling hills a gentle undulating landscape, typical (in terms of landform) of the countryside in this area. Importantly, in views to the West, there is a sense of openness as you can look across the Site down towards the river, and to the East, you can see up to the gentle and gradual incline of Broom Covert.

⁸ LT XX.

⁹ As set out in the evidence of TP, EIC.

13. Mr Toland accepts that his assessment of the visual aspects of openness was derived from the assessment of Mr Furber.¹⁰ The PRoW is an *arterial* route through the Site.¹¹ It is hard to overstate how important that route is to ‘receptors’ of the landscape – users of the footpath, and the bridleway. Accordingly, there appeared to be unanimity that it was the *most important* route through the Site.
14. Mr Furber was asked about the fact that the most harmful aspects of the scheme, for the longest duration abut that PRoW. Bunds 9 and 10 would be in situ for phases 1, 2, and 3.¹² These are in situ for 10 years (the entire life-time of the development. Mr Toland said that the bunds would ‘assimilate into the landscape’. That, he explained was predicated entirely on Mr Furber’s evidence (he clarified that he did not have any other material on which to rely).
15. However, Mr Furber’s assessment is fundamentally flawed. Conspicuous by its absence in the visual material is much (if any) material on how the bunds would look. Ask yourself Sir, why that is so. You are being asked to make a finding on the openness of the Green Belt. Mr Furber has provided materials to assist you in making a finding on whether or not there is a harm – particularly in visual terms – to the openness. You are also being asked too to draw a conclusion on the restoration harms being insignificant (or non-existent) and the weight to the restoration more generally.
16. You have a number of photographs before you. Those are contained in Mr Furber’s Appendix 2. The only viewpoints on which there is a *photomontage* demonstrating the impacts of the appeal Site from Year 1 through to Year 10 and 25, are Viewpoints, 4, 9, 17(c). We set out the issues with those particular viewpoints below:
- a. **Viewpoint 4** (and the subsequent, Year 1, 10 and 25 views) **only** relate to the photograph from the Lea Castle Hospital Mixed Use Development.¹³ Within the photograph, it is stated, that, if constructed, the Mixed Use development would ‘fully screen views of planting of the Appeal Scheme’. When the photograph is compared against the Lea Castle hospital masterplan (as explored by with Mr

¹⁰ LT XX

¹¹ A term that was used throughout the evidence, which was put to, and accepted by Mr Furber and Mr Toland.

¹² See page 11 of the Planning Statement (CD1.02)

¹³ See Figure 6, 7 and 8 of the Appendices to Mr Furber’s evidence.

Partridge in his EiC), it is clear that the development of housing/employment extends much further to the north along the main road. Far from being 'screened', that development would be looking *directly at* the Appeal Scheme.¹⁴ That is not depicted in the photograph as it is taken much further south, on Park Gate Road.

- b. **Viewpoint 9** is taken from Lea Castle Barns. Conveniently, that omits the photographs of the bunds which would be of some 6m high¹⁵ and in the foreground of the views through phases 4 and 5. They would be shielding operational workings on the immediate other side of the bund. The issue with the photograph is that it only shows the **10-year photomontage** after the bunds have been disassembled. That post-dates the development. That also massively underplays the impacts.

- c. **Viewpoint 17(c)** is looking across to the photograph from the rear garden of the Bungalow across the east of the Site. That was Mr Furber's best attempt to explain away the impacts from the bunding on the Site. However, it is set back considerably from the bunds; they would be more distant. They do not address the impacts on the PRow. They also do not grapple with bunding, or restoration impacts looking to the South West across the Stie, where the impacts would arguably be greater.

17. Those issues, combined with the totality of the photographic material that is contained in Appendix 2 is remarkable for a number of reasons.

18. **First**, there is no material before the inquiry with montages which show **bunding on any of the viewpoints**. That is curious in the extreme in an inquiry where, from the outset, you, Sir are being asked to make a finding on the impacts on the openness of the Site, during operational development – and Bunds 1, 2, 3, 4, and 5¹⁶ are there for the lifetime of the development. There are just three viewpoints from which the restoration impacts of the scheme are depicted. What flows from that is that it is unclear how Mr

¹⁴ TP EiC. Referring to the Lea Castle Hospital Site Masterplan. CD13.05

¹⁵

¹⁶ See CD1.02 which is the planning statement. I do not think that the bunds have changed since then.

Toland has made any such finding in his assessment of the openness of the Site. He claims that the bunds will ‘assimilate into the landscape’ but the basis upon which he can make such a finding where there is **no** evidence before the inquiry is seriously doubted.

19. **Second**, the issue is magnified when one starts to consider the places from where the photographs **have** been taken. What we have in Appendix 2 to Mr Furber’s proof is a series of photographs which show the bridleway (62B),¹⁷ and footpaths 623 (B)¹⁸, and 622(C),¹⁹ 625(B)²⁰. It would have been open to him to fairly depict the bunding in *each* of those photographs. It would have been open to him too to show the restored landform in each case. But nowhere is that point addressed in the photographic material provided.
20. The viewpoints that *could* have been provided would have been on the most well-trodden of the public footpaths with the most sensitive of receptors (walkers, horse riders). Is that too much to ask in the circumstances of an appeal, which is evidently grappling with a Site which is not isolated and away from people and built development? This, as we have heard throughout this inquiry, is a site which has a *very significant amount* of human and equestrian traffic that traverses the Site. With all due respect, even the most basic of training in landscape architecture would underscore the importance of grappling with the impacts upon those as the most sensitive receptors throughout both the *operational and restoration* phases of the development. The only way in which Mr Furber has grappled with those impacts in the photographic material, is by reference to what the viewpoints are *now*. What use is that to you?
21. **Third**, it was telling that, when pressed on this point (the impacts on the PRow users on the ‘arterial route’) in XX, Mr Furber took the inquiry to Viewpoint 17(c). It is agreed that this, to a certain extent, shows to a ‘restored’ hill to the east of the arterial bridleway, but much further away. It also does not show any of the impacts (operational, or restoration) on the wider bridleway, or PRow that moves through the Site, which is what he was asked to show. That is the view which will look directly at the bund for the occupiers of the bungalow. What it does not show is the view to the Southwest of

¹⁷ Viewpoints 15a, 15b.

¹⁸ Viewpoint 18a, 18b.

¹⁹ Viewpoint 20.

²⁰ Viewpoint A – Db.

the bungalow. What is more, is that was the *only* photograph to which he could take the inquiry when pressed on the impacts of the bunding on those users. That is telling.

22. **Fourth**, Mr Furber's defence is that one cannot be expected to provide such photographs (or extensive material). But, this does not even come *close* to addressing the concern. It is perhaps even more surprising where several photomontages *have* been provided. Frankly, those relate to views which are of less relevance, and which are selective in the extreme. From the Lea Castle Hospital view, it appears partly shielded by coniferous trees. That is not an effective screening, for the reasons that Mr Partridge has highlighted (as demonstrated by the Masterplan for that Site), and as demonstrated on the Site visit. From other views, notably viewpoint 9 (from Lea Castle Barns) the case has been put that there is no perceived impact over the ten-year period,²¹ as the bunding will have been disassembled within 10 years (the end of the operational life of the development). A balanced witness would have demonstrated what those bunds would look like (during operation) during years 3, 5, and 10 for example. They would have also provided montages of changes in landform during the restoration phase, particularly given that is of *critical importance* to the Appellant's case. The MLP repeatedly makes reference to the impacts being considered throughout the development.
23. It is striking that the best image of the proposed restoration landform is the cross section through the main drive. That is, however one cross section, on one part of the Site. That too does not address to **any** extent the visual impacts on openness. It does little to alleviate the concerns addressed above. On the contrary, the cross sections (even if all the material can be obtained which is severely doubted), show a destruction of the landform.
24. **Fifth**, as the Council highlighted in Closing, LT conceded that he had not analysed the effect on openness of traffic generation, vehicle movements and general activity. That is surprising when it is a PPG requirement. The bunding creation and dismantling process will have an impact on that too.²²

²¹ Viewpoint 4 for example.

²² Ms Clover's XX of LT.

25. **Sixth**, the cumulative impacts of the proposed development with both those developments with extant permissions and proposed development will undoubtedly have an effect on openness. These have not been adequately addressed. The Council has adequately dealt with those points in its closing submissions and those points on cumulative impacts are adopted, but are not herein repeated.
26. You may be wondering why all of this matters, Sir. It matters because Mr Furber is tasked with coming to this inquiry and presenting, a balanced view of the impacts of the development. This is particularly important in order to assist the Inspector with making a finding about the impacts on residential receptors (Lea Castle Barns and the Bungalow) and recreational users (on all of the footpaths/ bridleways), those most likely to be affected by the development. It is important too because you, Sir, are being asked to make a finding that there is no harm that arises from the visual aspects on openness. As part of the R6 party's case, you are being asked to look at landscape impacts on, for example, character too. It matters too because the Appellants are asking you to make a finding that there will be no impact on landform of note and that there are 'very special circumstances' that can be attributed to the restoration programme. It is seriously questioned how you, Sir, can you make such a finding with such gaping holes in the evidence base.
27. It is important for the reasons that Mr Partridge gave in his evidence, and Ms Hatch in hers. The arterial route through the Site will not only be affected by the noise, but disruption of the plant also sited, immediately to the east of the bridleway. It will also be deeply affected by the development of the bund around the hopper near to phase 3 of the site – it will change an open expanse to a tunnel or channel.²³
28. In the absence of such visualisations, the best that the Appellant can point to a series of plans which show the workings of the Site in more detail. On anyone's reading, to properly grapple with the impact of the bunds is *fundamental* to understanding impacts on openness. That was Mr Whitehouse's critique too.²⁴ For example, how can you appreciate the openness to the east of the arterial bridleway, unless you are over 3m tall?²⁵ How can you appreciate the impact on openness of the site to the west during

²³ TP EiC

²⁴ CW EiC

²⁵ Ibid.

Phase 2 and 3 of the workings?²⁶ How can you appreciate the openness southward of the Site from the bridleway which extends to the north of the Site without that kind of material? How can we be confident that the restoration landform will have no material impact on openness as the Appellant suggests. Moreover, and perhaps most importantly, how can Mr Toland make such a finding that the bunds will ‘*assimilate into the landscape*’, and that there will no such harm, without such material.

29. In the absence of such an explanation, the only finding that can be made is that these are a deliberate omission to shield the Appellant from the finding that there would be a tunnel or a channel as Mr Partridge highlights. That is the *only inference* that can be drawn. A recurring theme of the Appellant’s case appears to be – yes the operational workings of the quarry will be shielded by bunds. There has been scant little regard for how the bunds themselves are harmful. Plainly, given their size, they would restrict open view of the Site to the West, and to the East, for a considerable time.
30. Given the particular sensitivities of this Site, and given the sheer extent of mitigation that is necessary - no fewer than 20 bunds ranging from 6m to 3m in height. The mitigation required is extensive, because this is a sensitive site. Fundamentally, the impact of that mitigation is what the Appellant has failed to address.

The concept restoration plan

31. Throughout this inquiry, much has been made of the fact that the site would be restored. There has been reference throughout to the ‘Concept Restoration Plan’. When probed about the benefits that purported to deliver though, Mr Toland sought to resile from it – it was to be determined later by the authority he said.²⁷ The extent to which the Site would be ‘restored’ is a very relevant consideration when assessing impacts on openness.
32. Fundamentally, the PPG says that ‘remediability’ is defined taking account of any provisions that return the land to its original state or to an equivalent (or improved state

²⁶ TP EIC

²⁷ LT XX.

of openness.²⁸The question is then, is it ‘equivalent’ or is it ‘improved’. The Appellant accepts that the land will not be restored to what it was – it will be generally 2-7 m below the existing levels. But, even that scheme of restoration is dependent on an adequate volume of inert fill coming forward.

33. **First**, it is common ground that the proposals amount to approximately 1.7 cubic meters of material being removed, with just 0.6 cubic metres being replaced through the inert waste. That, as Mr Toland concedes means that there is over 1 million tonnes of the material short in its restoration scheme. A third, is ‘not going back’.²⁹ That will have an impact on the open expanse of the Appeal Site, both to the eastern and western portions of the Site.³⁰

34. Criticism was made of Mr Partridge’s use of the word ‘crater’. It was abundantly clear, however, that this is an appropriate descriptor to use. Plainly, if the Appellants were confident that there would be sufficient inert material, then there would not be 1 million cubic metres short.³¹ Moreover, there are well-founded, serious concerns that Mr Partridge has (which appear to be shared with Mr Whitehouse) with the capacity of the inert fill in order to fill the Site back up. Simply put, if there was enough inert fill, available, it would have been sensible to have refilled the restoration scheme. The Mr Toland’s response is that NRS have a significant amount of inert fill that it can draw upon through connections to its wider business. If that were so, it is really questionable why there is not a shred of evidence before this inquiry to substantiate that point, and, if it was so readily available, why the hole should be left at all.

35. Mr Whitehouse explained how, in his experience, the market for inert materials is ‘competitive’. Mr Partridge agrees, particularly in circumstances where more and more is being paid for inert waste as recycled aggregates and the use of modern methods of construction are on an upward trajectory.³² Just because the Lea Castle Hospital (and Village) site is across the road, it does not mean that the material will end up in the Appeal Site. 600 houses are already under construction there – the inert waste from that

²⁸ PPG, Para 001 ID: 64-001-20190722

²⁹ LT XX.

³⁰ TP EiC.

³¹ As was put to Mr Toland in his XX.

³² TP EiC.

Site was cleared years ago, and for the 800 houses ready to be built, then, on a virgin site it is seriously questioned the extent to which inert material will be produced at all.

36. As Mr Harthill and Mr Partridge highlighted, there are differences in levels in the restored scheme. That would not be consistent with the rolling landscape to which Mr Partridge referred (and a characterisation of the Site with which Mr Furber agreed). It would be 4-7m lower. This is not a site where restoration means ‘flat’. In a competitive marketplace, with very little security that the inert material could be filled in adequately.
37. The R6 Party endorse Mr Whitehouse’s analysis on this point. The restoration of the landform is not even positive – let alone a ‘very special circumstance’. Mr Partridge’s view is that it is harmful. Accordingly, there would be harm across the lifetime of the development. The Council is right that the lack of return of the restoration landform, in combination with the existing natural landform, in combination with the existent of the proposed development and a substantial bund to the East of the Stie that mean that this level of engineering works go beyond what is necessary for the mineral extraction works.
38. **Finally**, there is no bond by way of a UU which secures the restoration scheme. The force in the restoration scheme should therefore be seriously doubted. How can you be sure that the restoration relied upon will be an effective restoration, and how can you be sure that it come forward within 30 years.

III. ‘OTHER HARM’

Harm to landscape

39. The development is out of character with the area. There was no reference to quarrying in the landscape character assessment.³³ Unsurprisingly there are no references to bunds, steep banks or flat landscapes either. Indeed the LCA recognises that the main use is arable farming. It refers too (in the guidance) to the fact that the ‘parkland should be restored and *conserved*’³⁴. For all the reasons given above, Mr Partridge is right that

³³ NF XX.

³⁴ See Landscape PoE Volume 1 appendices. Page 54.

the relatively flat landscape would be completely incongruous, it would be an ‘alien’ features in that landscape.³⁵ Court Farm restoration scheme from across the road (from some 30 years ago) exemplifies that point.

Cultural heritage

40. It is hard to see how Mr Toland could possibly come to the finding that there is no impact on cultural heritage. He says that the statutory consultees have nothing to say on the matter. However, Mr Furber accepted that the cultural heritage is of great importance to the understanding of the landscape.³⁶ That is of course right – it is intertwined. That is recognised in GLVIA 3. The landscape is that emblematic of the ‘gentle garden of England’ – it is a quintessential site which we associate with the countryside. It is the *raison d’etre* why this landscape exists in the way that it does in the first place.³⁷
41. There are cultural heritage considerations which **must** be of significance. The Grade II lodges and gateway off Lee Castle, Castle Road are nationally listed³⁸. The listed lodge itself of special architectural and historic interest considered to be of both local and national importance. Both gatehouses are also included in the local list for their architectural and historic value.³⁹
42. Both the MLP and the WFDC recognise the importance of cultural heritage in this regard.⁴⁰ Development proposals should ‘*protect conserve and enhance all heritage assets and their settings, including the assets of potential archaeological interest*’.⁴¹ That contains specific reference to the ‘*historic landscape, including locally distinctive settlement patterns, field systems, woodlands and common and historic farmsteads, smallholdings and their settings*’.

³⁵ TP EiC.

³⁶ NF XX.

³⁷ TP EiC.

³⁸ See §6.4 of TP PoE.

³⁹ See §6.4 of TP PoE.

⁴⁰ See Policy MLP 32 which recognises potential impacts on the historic environment.

⁴¹ See §6.13 of TP PoE which refers to Wyre Forest Local Plan Policy SP21 on the Historic Environment.

43. Mr Toland does not even engage with that part of the Appellant's case. However, that too is surprising. First, there is intervisibility between the Grade II North lodge and Phases 4 and 5 workings.⁴² Broom Covert hill is clearly visible and will be removed.⁴³ The wall that then envelopes the Site, that delineates its extent, will partially be removed for the lifetime of the development. That, as Mr Furber agrees, must be taken into account from a landscape point of view.⁴⁴
44. The impacts of the proposed development on cultural heritage receptors are therefore of fundamental importance. There are other points too of historical interest throughout the Site: The wall, the remnants of the tree lined avenue, the historic trees, which though not removed, will be affected by the development. Those, Mr Furber accepted were all relevant to the appreciation of the landscape. That is a feature of the development which many consultees recognised.⁴⁵ Mr Toland has not put those harms in his planning balance either.

The objections on noise, dust and air quality.

45. On dust impacts, Ms Hawkins there were a number of assumptions that had been made in relation to the dust assessment work, this included the assumptions about the local weather conditions that would impact upon the local community.⁴⁶ We have dealt with three different types of particulate in this inquiry – disamenity dust, PM10 and PM2.5. Several points need to be made:
- a. **Dis-amenity dust** (greater than PM10), that is the kind of dust that can cause dust soiling to arise from the deposition of particulate matter in all sizes. Dust that is greater than 30microns makes up the greatest proportion of dust emitted from mineral extraction.⁴⁷ The greatest impact of that dust will be within 100m of the Site – that will include the bungalow, 70m to the north of the extraction

⁴² TP EIC.

⁴³ TP EIC.

⁴⁴ NF XX.

⁴⁵ To name but a few, Worcestershire Archive and Archaeology Service, the Parish Council, the Wolverley and Cookley Historical Society, the CPRE, Historic England, WCC Landscape team, Wyre Forest Conservation.

⁴⁶ KH.

⁴⁷ All agreed by KH, as per her proof.

area, the South Lodges and Broom Cottage, lying 60m to the south, and the grounds of the two schools of the south lie 80m to the nearest point to the proposed extraction area.⁴⁸

- b. There is no ‘limit’ – no ‘regulatory control’⁴⁹ on the dust that can be emitted before it becomes a problem. In short, there is no defined limit to how much of that type of disamenity dust that can be emitted before the local authority step in to regulate.⁵⁰ That includes on the impacts on the HKS, and on Bungalow for example. You Sir can record that there is no regulatory control on the extent to which the dust will soil the sheets on the McDonalds’ washing line.
- c. That matters because the residential amenity of those residents, students, and teachers is of great importance. It serves to underscore how *inappropriate* the location is for quarrying given its proximity to sensitive receptors likely to be affected by disamenity dust. The Dust Management Plan may only correct operations with several months’ time delay. There is no prescription about what must be included in the DMP, the measures that must be taken - there is no such document before the inquiry for the inspector to make such a finding about its content, its force and its efficacy.⁵¹ We invite the Inspector to take those criticisms on board when considering the teeth that the DMP has in controlling the dust impacts close to very sensitive receptors.
- d. The weather was also central to Ms Hawkins’ assessment regarding all of the particulates to be considered (disamenity, PM10 and PM2.5)⁵² She, and Vibrock had placed reliance upon the Southwest prevailing wind. This would exacerbate impacts of those within the 250m range in particular to the north/east of the site. This would include those in the Castle Farm Barns, and the Bungalow. It would take only a change of wind (and 50% of the time that wind does not prevail from the Southwest⁵³) to mean the receptors to the South/Southwest would be

⁴⁸ KH XX.

⁴⁹ Not subject to for example the Air Quality Objectives Standards and Targets as contained in Table 2.1 of KH evidence.

⁵⁰ KH XX.

⁵¹ KH XX.

⁵² Source-Pathway Receptor pathway.

⁵³ Accepted by KH XX all contained in her Proof of evidence.

affected. For that reason, it is suggested that the conditions on monitoring at the Bungalow alone are insufficient. That is a condition to which we invite the Inspector to have serious regard – and which has been extensively addressed by Mr Lord this morning.

46. Mr Carloss’ assessments too of the impacts of the increasing temperature on the environment⁵⁴ show that the likely impacts are likely to get worse as temperatures increase. The World Health Organisations’ research on the typical association of mineral activities associated with adverse respiratory and cardiovascular effects on health (recognised in the IAQM guidance too) ought to be taken into account too.⁵⁵
47. Mr Toland accepts that the noise impacts are entirely based upon the findings of Ms. Canham. He accepts that he does not go beyond that. It cannot be said therefore that he has even engaged with the issue of the noise impacts and the extent to which they affect the amenity of local residents – such an assessment is required by the PPG.
- a. 55dBA is the highest permitted level – that is an ‘absolute limit’⁵⁶ – beyond that level there would be an ‘exceedance event’;⁵⁷
 - b. There would be an increased temporary daytime noise limits of 70dBA in eight weeks in a year for essential site preparation;⁵⁸
 - c. That is a limit imposed which is blind to the rector which it was dealing with – for example, children, the elderly or tourists who may be more sensitive.⁵⁹
48. The average measured noise levels were recorded to be at 55dB in South Lodge, HKS, and close to the limit at Brown Westhead Park (54)⁶⁰ In each case, the average results had increased between 2018 and 2023.⁶¹ In several examples, there had been exceedances of the 55dB threshold⁶².

⁵⁴ The charts from Birmingham Airport, AC, dust PoE, page 5.

⁵⁵ As recognised at footnote 4 of the IAQN guidance. Although the main health burden to the population is known to be from the fine PM2.5 fraction of suspended particles, there is now evidence that short-term exposure to coarse particles i.e. those between PM10 and PM2.5, typically associated with mineral activities are also associated with adverse respiratory and cardiovascular effects on health (World Health Organization, 2013. REVIHAAP Project, Technical Report. Copenhagen)

⁵⁶ RC XX.

⁵⁷ RC XX.

⁵⁸ PPG

⁵⁹ As put to RC in XX.

⁶⁰ See CD1.07, page 14, Table.

⁶¹ CD14.07.

⁶² See Table 1B as an example - where there are multiple results in the first column which exceed LAeq,T

49. Remarkably, that is the baseline record - **without** the development in place. There will be an addition of plant, HGVs, workings on the site. That will introduce further noise sources to the immediate vicinity. Ms Canham accepted that.⁶³ As was put to her that would mean that there **would** be exceedances. It is the only conclusion which could logically follow. There are a few additional points to make:

- a. **Firstly**, it is extremely difficult to believe that the 55dB limit can be maintained even at locations of particular sensitivity, including at the HKS, South Lodge.
- b. **Secondly**, it is now extremely clear that there will not be regular reviews and updates of the noise limits. That may happen every six months.⁶⁴
- c. There has been no review of the baseline on any of the PROW on the site. There are no noise limits suggested for such locations either.⁶⁵ That will have severe consequence for all bridleway/ProW users too.

50. The limits proposed are ineffective and the R6 party have grave concerns that they are toothless.⁶⁶

51. The British Standard is a material consideration for the Inspector to have regard.⁶⁷ That includes a number of factors that are likely to affect the acceptability of the noise arising from the construction including the site location, the existing ambient noise. That requires regard to be had for matters such as the duration of site operations, the hours of work and the characteristics of the noise. Even in a tranquil environment such as this, the length of time for which the noise persists (particularly for a long working day (8am-6pm, 5 days a week with some working on Saturdays) is relevant. The working during the day may be disruptive for children in the HKS nursery who have naps during the day). The contrast of the noise to the surrounding environment is also relevant (quarrying vis a vis highway traffic, for example) would be a relevant factor to consider. Those can be jarring, or discordant sounds can be more harmful in a peaceful area. Particularly when that is much of the reason why people visit this part of the world.

⁶³ RC XX.

⁶⁴ RH in answer to a question from the Inspector.

⁶⁵ RC XX and also evident from the plan which shows the locations of the receptors.

⁶⁶ RC in response to Inspector's question.

⁶⁷ RC XX, CD12.15 – the Code of Practice for noise and vibration control on construction and open sites.

52. The PPG requires that account should be taken into account including (1) significant adverse effects (2) effects that give rise to an adverse effect; and (3) enable a ‘good standard’ of amenity to be achieved.⁶⁸ The PPG requires a view to be taken on the acceptability of the noise impacts which also requires that the amenity impacts too.
53. Ms Canham refers extensively to the first of those (protecting against a significant adverse effect), but all three – including the requirements for a ‘good standard’ of amenity to be achieved – are important. The levels proposed by WRS grapple only with the protection against *significant adverse effects* too. But s55dB is the threshold at which levels are deemed to be unacceptable by reference to ‘*significant adverse effects*’ – the first, and most severe of those three categories. Whilst her evidence sets out the requirements to have regard to amenity⁶⁹ scant little regard is had to the amenity in her assessment of the impacts. That is surprising when those are recognised at all levels of policy making. That is a harm to which the Appellants have had little, if any, regard in its evidence base.
54. The PPG⁷⁰ references too the impact on the Noise Policy Statement for England, which Ms Canham considered is also a material consideration.⁷¹ This sets the long-term of vision of noise policy to promote good health and a good quality of life through the effective management of noise. Importantly, that also requires the mitigation and minimisation of adverse impacts on health and quality of life, and well as, where possible, the contribution to improvement of health and quality of life. It is seriously questioned how such impacts can possibly have been assessed when the direct impacts on those using the Appeal Site for health reasons, including the PRow have not been assessed at all. Ms Canham freely conceded that was the case.⁷²
55. Mr Carloss’s evidence directly considers the impact of noise on local amenity and sensitive receptors, and on wellbeing and tranquillity. He refers too to the impacts of the warming environment for mitigation. No regard had been had to non-human

⁶⁸ Minerals Planning PPG, Paragraph 020, Reference ID: 27-020-20140306

⁶⁹ See her §3.24, by reference to the relevant paragraph (paragraph 20) of the PPG. the relevant policy in the Waste Core Strategy for Worcestershire, Adopted Waste Plan, Policy WCS:14 ‘Amenity)

⁷⁰ Minerals Planning PPG, Paragraph 020, Reference ID: 27-020-20140306

⁷¹ CD12.17.

⁷² RC XX.

receptors,⁷³ including the horses using the bridleway and at Lea Castle equestrian centre.⁷⁴ This referred extensively, including the psychological impacts of those operations too, on both the human and non-human environment.

Impacts on local amenities.

56. Mr Lord on behalf of Mr McCue explained the impacts of the Appeal Scheme on local amenities. There are 5 educational premises within 1km of the proposed quarry Site – 1800 young people from the age of 3 to 18 attend these schools, and we have heard from several of the local headteachers how amenity impacts will impact their schools, including the ‘perception of such harms’.⁷⁵ That is particularly important in respect of the primary school in Cookley (where there are impacts if the student roll is not filled) and from the fee-paying HKS, across the road. We urge you too Sir, for this reason, and for all the reasons given above, to have regard to the Convention Rights of the Child.⁷⁶

57. Tourism of critical importance to the local area too.⁷⁷ This includes the Brown Westhead Caravan and Camping just the other side (again, within 250m of the Site), the pubs and restaurants in Wolverely all of which draw on the importance of this, and the Conservation Area to local people.

IV. THE VERY SPECIAL CIRCUMSTANCES

58. Mr Toland sets out in his evidence the ‘very special circumstances’ that exist. Points about the need for the material have been canvassed above.

The need case

59. The Planning Practice Guidance sets out what the government’s view is on the landbank position, where it dips below the 7 years expected landbank. There are several points

⁷³ RC XX.

⁷⁴ RC, XX.

⁷⁵ §5 of the Local Amenity Chapter of the R6 proof.

⁷⁶ As set out in LMc Proof of Evidence.

⁷⁷ §5 of the Local Amenity Chapter of the R6 proof.

to make – firstly, each application for mineral extraction must be considered on its merits regardless of the length of the landbank. In other words, a shortage in the landbank, does not make a bad site, a good site.

60. It is also relevant to note that this is not an authority which is sitting on its hands, doing nothing to rectify the land bank position. Firstly, it is accepted that WCC has adopted the MLP which sets the planning framework and the criteria against which applications must be determined. Second, it is actively progressing the Allocations DPD which specifically grapples with a range of factors including the suitability of any given site, and their relative sustainability. This will include the need for the mineral resource, where it is found, the extent to which the site can accommodate such development, the known constraints on the Site.

61. Furthermore, and as the Council rightly highlight relevance of pending applications in the pipeline is to give a more accurate sense of how the need for mineral provision can be met in the short to medium term. Plainly, it would be a weightier consideration if the Council had not had the 7-year landbank and had no other potential means of addressing the shortfall in the 7-year either, as opposed to the actual situation, which is that there are other potential lines of supply on-stream. LT accepted this extent of the relevance of the information, which is why the other permissions are agreed as part of the SOCG. The need position, is with all due respect, not a ‘very special circumstance’

The Economic impacts of the scheme

62. An important part of the Very Special Circumstances case is the purported economic ‘benefits’ arising from the scheme. This is dealt with in Mr Tolands’ PoE where he claims that there will be a ‘*significant boost to the local economy*’. That is a bald assertion, and there is little substance which belies it:

- a. The purchase of the plant, the offices, weighbridge and maintenance equipment would not be purchased locally- they would come from a national supplier⁷⁸ or from an existing Site.

⁷⁸ LT XX.

- b. The minerals aggregate levy is nationally collected to encourage the recycling of aggregate - that too would not be applied locally.⁷⁹
- c. There were no colleges/courses of relevance, from which local labour would be drawn.⁸⁰
- d. He conceded that he had not even turned his mind to the negative impacts on local economy.

63. Additionally the evidence provided in the ES⁸¹ (1) directly conflicts with evidence made in his proof⁸² (2) the are namely economic impact quoted at £1M in the ES and £6-7M in the proof. In addition GVA is quoted at over £500,000 in the ES and just over £70,00 per employee in the ES and proofs respectively. This demonstrates the shortfall in diligence in creating the economic arguments upon which they rely.

64. Moreover, how can it be said that this is a balanced assessment in either the ES or the LT proof. How startling does that omission have to be when it is claimed, confidently in the PoE that there will be economic benefits – yet it is ultimately patently obvious that there is little that belies the assertion. By contrast, Mr Lord, properly engaged in the assessment of the economic impacts which were properly attributable to the scheme on both a macro, and micro-economic basis.

PRoW

65. Ms Hatch’s evidence explained the importance of the Equestrian centre which offers livery and indoor school hire. It is abundantly clear that the PRoW changes proposed transform what is currently a quiet path extending from North Lodges (and Cookley Village) down through the Site to the South lodges. It is a place where people come for tranquillity, for quiet, and for a safe riding experience. The following types of people

⁷⁹ LT XX.

⁸⁰ LT XX.

⁸¹ ES Chapter 21

⁸² Appellant PoE 10.4 onwards

are using the footpath, cyclists, walkers, joggers and runners, and horses, those on mobility scooters⁸³.

Operational

66. The Appellant's case on footpaths and bridleways is that there is an increasing length of bridleways, which would mean that it would represent a benefit of the scheme. But, as Mr Toland accepted, it is common ground that the length of the bridlepath is only one factor to which the inspector is required to turn his mind when considering the condition of the bridlepath.⁸⁴ This includes the surfacing of the bridlepath, the incline, the access, the noise and the immediate environs through which it cuts.

67. Mr Toland also fairly conceded that this is a Site which is surrounded by PRow and that there would be impact throughout. That is right, the Highways Act 1980 requires the authority to have regard not only to the length of the proposed PRow, but also to other factors such as the environs and its surfacing. That is because it requires the route to be not substantially less convenient to the public, and regard needs to be had on the public enjoyment of the path or way as a whole.⁸⁵

68. Plainly, Ms Hatch, the only equestrian expert before the inquiry's points are of paramount importance for consideration here:

- a. **First**, there is no evidence at all that the BHS did not 'raise a concern'. Rather they raised concerns that were unaddressed. For example, it was said that more detail was needed with regard to traffic and footpath management where there would be the creation of the new public access. Mr Toland admitted that the detail that had not been put forward. That had plainly not been addressed yet.⁸⁶

⁸³ The Stop The Lea Castle Quarry Action Group observed the usage of the footpath over the course of one week during the month of August, starting on Monday 2nd August 2021. The observations were restricted to weekdays to avoid the clear bias to usage at weekends. It was believed that it gave a minimum traffic calculation rather than maximum calculation. The results were then extrapolated for a 12-month period to estimate one calendar year's use.

Those numbers saw the following types of people utilising the footpath.

Cyclists 16 | 1,165

Walkers 237 | 17,254

Joggers/Runners 40 | 2,912 Horses 10 | 728 Mobility Scooter 3 | 243 Total Individuals 306 | 22,309

⁸⁴ LT XX.

⁸⁵ Section 119(6)(a) of the Highways Act 1980.

⁸⁶ LT XX.

- b. **Second**, the BHS expressed its discontent at the removal of the public bridleway from the revised plan. That was depicted in pink on the post-restoration PRow plan. That however has been explained to be 6-10 steps on the north-western extremity. As Ms Hatch was able to explain, who can navigate the steps for it to be any meaningful ‘upgrade’?
- c. **Third**, it is patently clear that the BHS have not considered this alongside the quarry workings on the Site. The PRow/Bridleway plans are separate from those which demonstrate the operational workings from initial workings through to Phase 5. The horse rider on the arterial bridleway is faced with traversing a road under which there is a conveyor (with all the noise, dust, vibration, and disruption that causes), and exacerbated by the bunding 4-5m tall (which hides from the horses’ view all the workings of the plant, which is in itself, dangerous⁸⁷). As Ms Hatch explained, even an *experienced* rider would not be able to cross a vibrating platform. Novices would struggle even more. She, in her 20 years+ experience did not think that even *she* would be able to cross it.⁸⁸ Horses’ hearing is so acutely tuned to keep them safe. She considered that there was no evidence to support the proposition that a conveyor under a bridleway because there is none, it is dangerous.⁸⁹ The truth is that the modifications from to the PRow during the lifetime of the development are wholly inadequate, and as Ms Hatch explained, unsafe.
- d. The alternative for someone approaching the south lodge is to travel along the southern boundary of the site. This involves travel alongside the 60mph Wolverley road, and then along the main A road. The safe passing distance for ponies is 10mph⁹⁰, again that route would involve moving between bunds and alongside plant. The crossing issue, as Mr Toland assisted us with, has not been resolved.⁹¹ The extent that this is an addition, it represents a wholly inadequate addition to the bridleway.⁹²

⁸⁷ As horses are flighty animals.

⁸⁸ RHEiC

⁸⁹ Rebecca Hatch EiC.

⁹⁰ Rebecca Hatch EiC.

⁹¹ LT XX.

⁹² Rebecca Hatch EiC.

69. As Ms Hatch highlighted, the Inspector is respectfully invited to heed the guidance issued in the Barrow Hill quarry in Leicestershire which was refused in 2019 over its proximity to a livery yard, the safety of the horses and riders and the potential for injuries to horses and safety concerns.

The restoration ‘benefits’

70. Much is made too of the restoration scheme too. These have been comprehensively addressed above – they do not even effectively restore the scheme, let alone constitute a VSC. The inadequacy of ProW network have been considered above. The pocket parks which are preyed in aid as a benefit. Reluctantly, Mr Toland conceded that they were ‘miniscule’⁹³; and one was right by a busy road, one sits right in the PRoW. They could hardly be any smaller. Much is made too of the agricultural parkland – that is not materially different to what is currently on site.⁹⁴ The biodiversity net gain benefits must be considered against the context of the loss of the biodiversity associated with the life of the development.

71. Taken individually, or cumulatively, none of these are ‘Very Special Circumstances’.

V. COMPLIANCE WITH THE DEVELOPMENT PLAN, TAKEN AS A WHOLE

72. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”) requires that an assessment made of the existence of policies in the development plan, taken as a whole.

73. The ‘Development Plan’ comprises the Minerals Local Plan but importantly, it also comprises the Wye Forest District Plan. Both of those were adopted as recently as 2022. They could barely be more up to date.

The Minerals Plan

⁹³ LT XX.

⁹⁴ LT XX.

74. In the MLP3(b)(i) it is said that planning permission will be granted for new mineral development and extension within the strategic corridor where there is a shortfall in supply. That is subject to several vitally important caveats:

- a. First, the important proviso that it will only benefit from that where the '*mineral resource was not allocated due to viability, environmental or amenity constraints, and it is clearly demonstrated by the applicant that those constraints can be satisfactorily managed or mitigated*'.⁹⁵ However,
 - i. It is not the case that the Site has any allocation status at the moment. It is simply within an area of search; and
 - ii. It is not demonstrated that the environmental and amenity impacts can be adequately mitigated for all the reasons given above.
- b. It also subject to the important caveat that the MLP must be read **as a whole**. There would be arguable conflict with the MLP 28 (amenity), MLP29 (air quality), MLP30 (access and recreation), MLP32 (historic environment), MLP 33 (landscape). There has been no engagement with that exercise at all on Mr Toland's part.

Wyre Forest District Plan

75. As was put to Mr Toland, it is abundantly clear, that the Appellant has **not even engaged in** that very basic task of assessing against the WFDC either.. That sets out what the local priorities are, and what the Local Planning Authority deems to be acceptable development in its district. WFDC provided a detailed consultation response which bears reading.⁹⁶ That refers to the potential harms on the nearby residential occupiers, including concerns about the delivery of housing on the Lea Castle Village Site.⁹⁷ It is a large strategic allocation, which is '*fundamental to delivering the aims of the (then) emerging plan, along with critical infrastructure in the area*'. It is critical in delivering the 5YHLS in Wyre Forest. Mr Toland had erroneously referred to 'sterilisation' of the Appeal Site. That he agreed (a risk of sterilisation) did not apply to

⁹⁵ MLP3, (b)(i)

⁹⁶ CD4.38.

⁹⁷ Ibid, page 2.

Appeal Site. Perhaps in light of the consultation response provided by WFDC, the opposite should be said – that there is a risk of sterilisation of what is described as the ‘jewel in the crown’ of the WFDC plan.⁹⁸

76. What is the upshot of not even engaging with the assessment of how the Appeal Site performs against the policies in the WFDC Plan? Plainly there is no regard that has been had to (1) whether or not the scheme complies with the development plan, taken as a whole and (2) there has been no assessment **at all** of the harms that arise from conflict with the WFDC. Mr Partridge was not Cross examined on the policies cited (and the harm that he identified to those in his proof). These are all harms which must be weighted against the scheme in the planning balance or the ‘other harm’ identified above. We commend those to you as the only, unchallenged assessment of compliance with those policies before the inquiry. In short, those points were:
- a. **SP2** requires the safeguarding and wherever possible the enhancement of the open countryside. That also requires the maintenance of the openness of the GB and the protection of the development areas that are sensitive because of the landscape, heritage assets or biodiversity.
 - b. Similar points can be made about **SP6** – development proposals will not be permitted where it would be likely to have a significant effect on the District’s BMV, and historic farmsteads will be protected from inappropriate development. Plainly, there is harm assessed against that policy too.
 - c. **SP16** – refers to health and wellbeing. That requires development proposals to minimise the negative health impacts and maximise the opportunities to ensure that the people in WFDC lead healthy, active lifestyles and experience high quality of life. As you have heard at length, this is an area enjoyed for recreation and from people from immediately adjacent settlements, and by those from further afield.⁹⁹ In light of the disruption all of the adverse effects on amenity,
 - d. **SP17** too refers to the impacts on the diverse local economy; employment on existing site will be supported. As part of his broader assessment of the economic benefits it was clear that he had turned his mind to an assessment of

⁹⁸ WFDC Cllr who spoke during the course of the inquiry.

⁹⁹ Mr Lord EiC

economic impacts on a wide-scale basis. He had not even turned his mind to the potentially negative economic consequences arising from the scheme.

- e. **SP19** – sustainable tourism is emphasised to be important in the Plan. Mr Toland couldn't assist us in that regard either. Mr Partridge and Mr Lord are clear that there will be a detrimental impact on the local tourism businesses.¹⁰⁰
- f. Policies **SP21** – deals with heritage impacts, this is dealt with above and plainly there is harm to which you need to have regard, and accordingly apply the Statutory Duty in the Planning and (Listed Building and Conservation Areas) Act 1990 where you are also required to give harm to heritage assets 'considerable importance and weight'.
- g. **SP25** - Mr Toland had not assessed the impacts on the regeneration of the waterways. The Staffordshire and Worcestershire Canal Development and initiatives makes a positive contribution to the creation of an attractive and high quality canal site environment. This development will fail in that regard; and none of the assessment work conducted by the Appellant has grappled with that either.

77. So, why have the Appellants failed to undertake that exercise? Either it is a fundamental oversight, or a convenient omission. We will let you make a finding on that Sir.

78. In the absence of this assessment, we commend Mr Partridge's analysis to you, and invite you to feature those in the 'other harms' to be considered as part of the planning balance in respect of GB.

Conclusion

79. Taking a step back, this is a Site which local people use, and love. It is for that reason that the amenity impacts with which you need to be concerned, Sir are of carry much

¹⁰⁰ Note here the Tourism elements of the 119 million visits are made to the region, generating over £121 million to the local economy and offers employment to more than 2,100 people (TP PoE §9.28).

more weight than they might in an isolated field, not used by anyone, and not so close to residential occupiers, schools and other amenities. Many of the harms to the openness of the GB, are so harmful because the Site has those characteristics.

80. The bunding, for example, is much more excessive on this Site than it otherwise would need to be. Moreover, the concerns on the harms to the GB are well-founded. They are concerning over both the short, and the long term. We invite you to take a precautionary approach here Sir given the sensitivity of this landscape – and the inability to attach appropriate conditions and given that there is no critical need.
81. For all the reasons contained in these Closing submissions, for the reasons given the R6 witnesses, and the many people who have spoken to this inquiry, we urge you Sir to dismiss the Appeal.

SIGNED DAVIES
No5 Chambers
8 March 2023