IN THE MATTER OF:

SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990

and

AN APPEAL BY NRS AGGREGATES LTD AGAINST THE REFUSAL OF PLANNING PERMISSION BY WORCESTHIRE 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

PINS Ref: APP/E31855/W/22/3310099

County Council Ref: 19/000053/CM

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

INTRODUCTION

1. These Closing Submissions address the 5 main issues identified by the Inspector in his opening on Day 1 of the Inquiry:

    a. 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.

b. The effect of the proposed development on living conditions of the occupants of existing and future nearby dwellings and the amenity of pupils and staff at Heathfield Knoll School and First Steps Day Nursery with particular regard to outlook, noise, air quality and health.

c. Effect on the character and appearance of the area, and the weight to be attached to matters relating to highways, local economy, PROW/bridleways and heritage.

d. 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.

e. 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. It is not the purpose of these Closing Submissions to repeat what is already before the inquiry in the written evidence, or to summarise everything that was said at the inquiry in relation to all of the above matters. The aim is to focus on the key matters in dispute, and provide succinct submissions on those matters to help the Inspector reach a reasoned decision. The Inspector is requested to read these Closing Submissions alongside the Opening Submissions that were provided by the Appellant on Day 1 of the Inquiry.

MATTER 1: NEED

3. No one has sought to seriously contest the fact that the County has an urgent need for more sand and gravel.

4. MLP14 (CD11.03, p.121) states that a landbank of at least 7 years will be maintained throughout the plan period. This mirrors the requirement in the NPPF (para. 213(f)). The PPG on Minerals (para. 082) states that '*for decision-making, low landbanks may be an indicator that suitable applications should be permitted as a matter of importance to ensure the steady and adequate supply of aggregates*'. This is underscored by para.084, which conveys the message that even if a landbank is above the minimal level, this is not a good reason of itself to refuse permission – '*there is no maximum landbank level and each application … must be considered on its own merits regardless of the length of the landbank.*' More pertinently for this appeal, it adds '*where a landbank is below the minimum level this may be seen as a strong indicator of urgent need.*'

5. As regards how the landbank is to be measured, MLP14 states: '*As the levels .. of permitted reserves will vary over the lifetime of the MLP, the most recent Local Aggregates Assessment must be referred to by applicants and decision-makers.*' It is submitted that this is an important provision and there is no reason not to apply it. Its purpose is to ensure that there is a fixed point in time for determining the level of supply, because ad-hoc additions to the supply arising from consents granted after the base-date of the assessment can provide an inaccurate assessment unless the assessment is fully re-ran taking account of what has been used from the landbank since the last assessment. In this case there is a very recent Aggregates Assessment, published January of this year, which shows a landbank of only 4.14 years (SoCG para. 73). On analysis this represents a significant shortfall and thus a 'strong indicator of urgent need'.

6. For the reason set out above it is not appropriate to consider what consents have been granted since the base date of the Aggregates Assessment. But even if one does so, the supply moves to 5.74 years (SoCG para. 7.5), still considerably below what is described in the MLP and the NPPF as the 'minimum' requirement. But this agreement on what the supply would be if recent consents were factored in was reached prior to Gloucestershire CC refusing the Bow Farm Quarry application. If this source is discounted (as it should be because there is no knowing whether the applicant will appeal

and/or whether the appeal will succeed), the supply falls to 4 years.

7. CW next sought to rely on applications currently under consideration. If we make a deduction for the fact that Piches Quarry has reduced its application to 850,000 tonnes (from 1Mt), if all three of these applications were granted this would add a supply of 1.9 years (LT para. 5.2.8). It follows that the supply would still be below the required minimum 7 years (4+1.9 = 5.9yrs). But such approach is flawed in any event because

    a. it goes against the express requirement in the DP that when taking decisions one should take the supply figure set out in the latest published assessment;

    b. it fails to acknowledge that if nothing is done now to grant more permissions by the time these quarries become operational (possibly two years from now) the supply would have fallen by a further two years;

    c. and (most importanty) it involves engaging in predetermination of those pending applications (as the example of Bow Farm Quarry shows, they may or may not be granted permission).

8. There is therefore an urgent need for more sand and gravel in this County.

9. Turning next to the waste element of the application, the Appellant does not seek to justify its application for a sand and gravel quarry on the basis that infilling of the void thus created will meet a need for inert waste disposal in the County. The disposal of inert waste at the site is instead justified by reference to Policy WCS5(iii) of the Worcestershire Waste Core Strategy ('WCS') which permits such disposal where 'the proposal is essential for operational or safety reasons or is the most appropriate option.' Neither the County Council as waste authority, or indeed anyone else at this inquiry, has sought to argue that infilling the void with inert waste is not essential for

operational or safety reasons and/or that it is not the most appropriate option. Indeed, the WCS expressly cites landfill for restoration of mineral workings as an example of something that is required for operational or safety reasons (para. 4.45 of the explanatory text to Policy WCS5).

10. MLP26, under the heading of 'Efficient use of Resources', does require the decision-maker to have regard to 'the appropriateness of importing fill materials on to site, and the likely availability of suitable fill materials'. As regards the former, no one has questioned that it is appropriate to restore the site with fill materials. Assertions have been made to the Inquiry that there will be insufficient inert waste available to carry out the restoration as planned. Such assertions derive no support from the available evidence.

11. As explained by LT in his written and oral evidence, the NRS group of companies are one of the largest waste management operators within the Midlands. It runs some of the largest inert tipping facilities in the Midlands, and has strong links with construction companies and house builders throughout the regionn. The Company is a preferred by some of the largest of these firms to manage their inert soils and recyclable material. Of the two NRS sites which have permission for inert landfill and recycling (Meriden and Saredon), these service numerous contracts to the south and west of Birmingham that involve hauling non-recyclable clay and soil to the two above sites concerned. A new site at Lea Castle would be an environmentally better solution to managing inert fill from the south and west of Birmingham, rather than haul it further afield. Meriden Quarry alone received 783, 452 tonnes inert waste in a single year (2021) (see LT para. 6.4.4) (note that the Lea Castle site would require only 1,020,000 tonnes over 11 years).

12. If this were not enough, 800 dwellings are about to be approved right next door to this site and this will require those builders to dispose of their inert waste. Given that transport costs are the largest overhead when disposing of inert waste, the builders next door will have every incentive to take their inert waste to this site. It is simply not plausible to assert that the Appellant

will not be able to get its hands on 600,000 cubic metres of inert material at a rate of 60,000 cubic metres per annum.

MATTER 2: IMPACTS ON LOCAL AMENITY

13. Considerable concern and anxiety was expressed by the R6 and other local residents over the potential of the proposal to impact on the living conditions and health of the local populace. Issues raised focussed on outlook from residences, noise, air quality and health. We briefly address each of these.

Outlook

14. The concern related to the impact that bunds would have on the outlook from residences situated around the site. The Inspector has been provided with detailed information about the size, location and duration of each bund. Evidence has also been provided to explain how they will be graded and grass seeded. The majority of the temporary bunds on site will only be 3m in height. There will be one bund which is 6m, but this will be *in situ* for only 9 months.

15. The facts being established, the question of impact is a matter of planning judgment. The Appellant invites the Inspector to agree with it that, given the generally enclosed nature of the site, the distance from residential properties and the temporary nature of the bunds, the impact on outlook is not harmful, and certainly not unacceptably so. In this it is supported by the Council which, whilst initially seeking to rely on this as a RFR, eventually accepted that the impact on outlook was not sufficient to sustain a RFR.

Noise

16. A Noise Impact Assessment was submitted in support of the planning application. It was scrutinised by Worcestershire Regulatory Services ('WRS'), a statutory consultee with a duty to protect the noise environment

of the area. They were satisfied that the measured noise levels calculated were robust in isolation, the noise from this proposal would remain within national guidance and there would be no adverse noise impacts associated with this development in isolation. Since that date a cumulative assessment has been provided also, and the County has satisfied itself (presumably after liaising with WRS) that the noise impacts will remain within national guidelines and thus acceptable even when assessed in combination with other committed development.

17. No expert evidence has been submitted to this Inquiry to challenge the evidence submitted on behalf of the Appellant, or to challenge the assessment of that evidence by WRS. Ms Canham on behalf of the Appellant explained that she had taken updated baseline measurements, and these demonstrated that the noise levels measured in 2018 were very much a worst case baseline (the background noise measured in 2023 was higher, and thus the noise limits proposed are, by virtue of being based on the 2018 results, extremely stringent). Furthermore, the detailed calculations for each specific receptor used the worst case distances (i.e the closest) from the operational parts of the site and the highest calculated result for each location was presented in the assessment.

18. The outcome is that the noise from this proposal will not exceed the background by more than +10dB at any of the receptors, and neither will it exceed 55dB(A) LAeq (free field). It will therefore accord fully with PPGM para. 021. The R6 sought to argue that because the noise levels are already close to 55dB at some of the receptors, and some of the suggested noise limits are set close to 55dB, this means that the proposal gets ‘very close’ to breaching acceptable noise limits. This is to misunderstand the evidence and also the planning guidance for minerals. The suggested noise limits are all at or below the 55dB LAeq. Finally, the calculated site noise level will remain at or below the suggested noise limit at all receptors.

<u>Air Quality</u>

19. The ES was supported by technical appendices on dust and traffic emissions. WRS did not request any additional information, nor did it raise any technical objections to the assessments provided by the applicant/Appellant. On receipt of third party objectons, WRS reviewed its position and confirmed that its position remained unchanged – there was no basis to object to this proposal on the basis of adverse impact on air quality. It sought a Dust Management Plan, and this will be provided via condition.

20. It is important to emphasise that planning policy (NPPF para.174 and MLP Policies 28 and 29) prohibits 'unacceptable adverse impacts'. This means that in order for permission to be refused there must be evidence of significant adverse effects – an adverse effect of itself does not necessarily equate to an unacceptable impact or significant adverse effect.

21. Ms Hawkins explained in detail how the disamenity dust asssement was carried out. The potential dust sources in this case are categorised as 'small' most aspects of the development, and rise to 'medium' for soil stripping, extraction and restoration (only if prolonged dry conditions persist). This is because stripping will be limited to one phase at a time, the sand and gravel itself is likely to be moist, the method of extraction involved is low energy (single hydraulic excavator), there is no large crusher involved, the processing involves the use of water, and it will take place at the bottom of the void thus reducing wind-blown dust.

22. All potential receptors have been considered, taking full account of weather conditions (including wind direction) and the built-in and additional mitigation (stock piles and processing within the voids, seeded bunds, wheel washing, minimisation of drop heights, use of dust suppression, maintenance of smooth running surfaces for internal haul roads, and a monitored complaints process). All of these matters would be controlled through the DMP.

23. The assessment shows that there is a risk of 'moderate' dust impact at the Bungalow (1 property), but only during the initial phase. As the bunds establish and the process moves away from the boundary, the impact drops to slight to negligible (KH, para. 5.3.20). The properties at Castle Barns are likely to experience no more than a 'slight adverse' impact at most, and all other receptors will experience 'negligible' effects (KH, paras. 5.3.21 – 5.3.22). Once again, the R6 case that this develop comes close to causing significant adverse effects is simply not supported by the evidence.

24. As regards PM10 and P2.5, the maximum average concentrations in the study area relevant for this proposal are substantially below relevant objectives (at approx.30% of the objective limit) (KH para. 6.1.4). The assessment shows that this development would add 1up/m3 (microgramme per cubic metre) (as an annual mean) to the background, and this would have no perceptible impact on the objective (given the headroom to the limit) (KH para. 6.1.7). The IAQM Guidance on mineral dust specifically states that no assessment is required when the background PM concentration is less than 17 ug/m3; here the background level stands at 11.18 to 12.01 (KH para. 6.1.9 and 6.1.10).

25. The Appellant has also considered vehicle emissions. All movements are below the relevant screening criteria, other than for a stretch of the Wolverley Road between the access and the A449. Greatest impacts are predicted at Broom Cottage, but given the nature of the road and based on monitoring data from elsewhere the pollutant concentrations will be well below the relevant Air Quality Objective (KH para. 6.2.14). Whilst mention has been made of the Kidderminster Ring Road AQMA, predicted HGV movements through this AQMA (even assuming no back-haul at all) are also below the IAQM screening threshold for an air quality assessment.

26. As with the noise impacts, assessments relating to air quality were updated to take account of cumulative impacts and the above results remained unaltered.

Health

27. The R6 party has submitted evidence relating to silicosis (RCS).

28. The HSE provides guidance on protecting on-site workers, because it is those who are working in very close promixity (and especially in enclosed spaces) who are at greatest risk (KH para. 6.3.3-6.3.4)

29. There is no UK established or recommended standards for RCS in ambient air, and neither is there any available, agreed assessment methodologies (either statutory or non-statutory). But importantly, HSE advice is that *'No cases of silicosis have been documented among members of the general public in Great Britain, indicating that environmental exposures to silica dust are not sufficiently high to cause this occupational disease'* (extract from HSE website provided in KH Appendix10).

30. So despite literally hundreds of years of quarrying in this country, including operations which are more likely to lead to the release of silica dust (hard rock quarries, blasting etc), there is not a single case of a member of the general public being affected by this occupational disease.

MATTER 3: CHARACTER AND APPEARANCE, HERITAGE, PROW, HIGHWAYS, ECONOMY

31. We briefly address each of these issues in turn.

Character and appearance

32. Impact on character and appearance is normally assessed through the provision of a landscape and visual impact assessment ('LVIA'), and this was submitted as part of the application. There is no published landscape assessment document which identifies the site as a valued landscape, or a sensitive landscape incapable of absorbing change and modification. To the

contrary, as recorded in the RTC (para.594), the site formed part of 'a now degraded agricultural parkland with the loss of trees, woodland and hedgerows'. The LVIA concluded that there would be slight to moderate effects on landscape character during the operational phase.

33. The LVIA recorded that post restoration, there would be a strengthening of appropriate landscape elements and features which respects and replicates the sites historic past whilst providing new and increased diversity and net gain of individual landscape elements along with the promotion and integration of amenity and wellbeing opportunities and biodiversity net gain. This includes pocket parks based around a green infrastructure strategy. New habitats would also be created including approximately 7.5 hectares of acidic grassland; approximately 3.42 hectares of new woodland blocks; new planting and strengthening of existing hedgerows, totalling approximately 1,018 metres in length; and planting of approximately 170 avenue and parkland trees. As now recorded in the SOCG, there will be BNG of almost 40%, 4 times that required by national planning policy. The LVIA assessed the restoration scheme as providing as having a notable beneficial impact (as compared with the baseline) as a result of the enhancement proposals. The objective is bring back elements of the original parkland that have been lost.

34. The LVIA also contained a detailed assessment of the visual impact throughout the lifetime of the operation. It concluded that subject to the implementation of these mitigation measures no visual receptors would receive significant adverse effect during the proposed development.

35. The County Landscape Officer reviewed the LVIA and said he agreed with its assessment methodology and conclusions, and the Head of Planning (although he disagreed with some individual assessments of harm within the LVIA) agreed overall that the proposals were acceptable in terms of impact on the character and appearance of the area. The proposal was also considered by the Hereford and Worcester Gardens Trust, who had no objection. At this inquiry the Appellant called evidence from NF on landscape and visual

matters, who confirmed that in landscape and visual terms the proposals will not have unacceptable impacts.

36. It will be noted that whilst the Council contests the Appellant's case on the impact that these proposals will have on GB openness, it does not contend that the proposals are unacceptable in landscape and visual terms. It has never put forward a landscape and visual reason for refusal, and CW was clear that his evidence was restricted to looking at impact on GB only.

Heritage

37. A programme of archaeological work was submitted in support of this application. Historic England offered no comment other than to request that there be consultation with the County Conservation Officer and Archaeologists. The County Archaeologist and the Wyre Forest District Council Conservation Officer were consulted, and confimed that they had no objection to the proposal subject to conditions for a programme of archaeological work, including a Written Scheme of Investigation, provision made for analysis, publication and dissemination of results and archive deposition, and a scheme for the reinstatement of the historic boundary wall. Hereford & Worcester Earth Heritage Trust also do no object to the proposals.

38. Mr Partridge, both in his written and oral evidence, referred to a number of designated and non-designated heritage assets. But as the Inspector will know, simply pointing to the presence of such assets does not establish that they will be harmed. Whether or not there will be harm must be assessed following a well known metholodology, and then the harm graded into one of the relevant categories set out in Chapter 16 of the NPPF. Mr Partridge did not even purport to follow this methodology. There is no heritage impact assessment, or any other evidence from a qualified heritage expert, to undermine the conclusions presented by the Appellant and supported by the

statutory and non-statutory consultees as regards impact on heritage.

PROW/Bridleways

39. The Appellant accepts that the visual amenity currently enjoyed from the PROW/bridleways will to some extent be adversely affected whilst the quarrying operation is underway. But the level of this adverse impact has been significantly overplayed by the R6 – hyperbole to the effect that people will be walking through a 'tunnel', that horses will throw off riders, that people will choke on the dust or be deafened by the noise, and that no one will use the PROW is not helpful.

40. It is important to retain a sense of perspective, and understand precisely how the scheme will interact with PROW, both during quarrying and post-restoration. We make the following brief points:

    a. This not a development that will lead to the loss of PROW. Bridleway 626(B) will remain open save for a 2 week period (1 wk at a time, separated by a time span of some years). Even during this time, a diversion will be provided for the 30m to 50m that will be closed.

    b. PROW provided either by way of a temporary diversion or a permanent addition to the network will be provided to requisite statutory standards as regards surface treatment and gradients etc.

    c. Throughout the operational phase the network of PROW remain useable – it will continue to serve its primary purpose of providing connections through the site.

    d. At no point will the PROW be impacted in its entirety – the phased working means that only short sections of the PROW will be impacted at any given time, and the impact on visual amenity is limited also by the fact that even in the baseline situation not all parts of the

site are visible from every part of the PROW network.

e. A combination of the bunds and the lower level of the mineral working will mean that after the initial soil stripping on each phase (which lasts only a matter of weeks) the operation will not be visible to those using the PROW.

f. Having to walk past a graded, grass-seeded bund, an experience which will last for only a short stretch of the PROW at any given time, will not spell the end of the world. We refer to the above sections on noise and AQ in support of our submission that people using the PROW will not experience any significant noise or air quality issues – an excavator scraping up soft sand and placing it into a dumper truck that drives from A to B is not a particularly noisy operation, and neither does the processing involve the crushing of large rocks.

g. The impacts on visual amenity from the PROW will temporary, but the additional 2.7KM of proposed PROW/bridleways and permissive bridleways as part of the restoration will be permanent.

h. If the impacts on the PROW network are going to be as bad as suggested by the R6 it is difficult to understand why there was objection to this development from either the County Footpath Officer, the Wyre Forest DC Countryside and Parks Manager, the Rambers Association or the Malverns Hills District Footpath Society, all of whom were consulted and all of whom expressed themselves as satisfied with the proposals.

41. Much as been made by the R6 and other local objectors regarding the impact on horseriders using the bridleway. All of the above points apply with equal force to bridleways – they will always remain available, any diversion will be for a short duration, and an extensive length of new bridleway will be

provided along the southern boundary of the site.

42. The BHS was consulted, and fully engaged with these proposals. They submitted 4 consultation responses. Regional and local representatives of the BHS attended the Cookley Public Consultation event. We cannot say definitively that they did visit the site, but it would be odd if they turned up locally but chose not to visit the site, given that they then engaged fully throughout the process and made suggestions about what they wanted to see upgraded, how and why. It is wrong for the R6 to assert, without any evidence, that the BHS representatives did not visit the site or were not familiar with it.

43. The R6 then sought to hang its hat on the fact that the BHS had asked for more information, which had not been provided. If it believed that it could not support the proposal unless it was provided with this information it would have said so. Instead, what it said was that 'notwithstanding' these matters it welcomed the Appellant's proposals. It is also wrong to say that it wanted more information – what it said was that 'more detail is required in relation to where the new section of public access would cross the proposed site entrance' (para. 246). The details called for were specific and narrow in scope – signage, speed restrictions, surfacing etc. It was for the Head of Planning to decide whether to call for this prior to determination, or to make this matter the subject of condition. He chose the latter, and it was perfectly reasonable for him to do so. We have not heard anything from the R6 to the effect that these details are incapable of being worked up in due course.

44. It is reasonable to conclude that the BHS know whether the bridleways would be suitable during the excavation phase, and also know whether the proposed bridleway along the southern boundary has an acceptable relationship with the road. It is also reasonable to conclude that if the R6 and other objectors are right and these bridleways will be rendered useless, one would not have expected the BHS (a body set up and administered with the sole aim of promoting the interests of horseriders) to describe the

Appellant's proposals as 'positive', to 'welcome the restoration proposal and proposed additional shared use routes for … horseriders' (RTC para. 246/247), and nor would it have asked that some more of the PROW be upgraded to a bridleway.

Highways

45. The NPPF is clear that development should not be refused on highway grounds unless there would be unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe (NPPF para.111). Both highway safety and the assessment of cumulative impact require a technical analysis, by an individual with the necessary qualifications, training and experience. This application is supported by a TA and a road safety audit, all prepared by individuals with the necessary qualifications, training and experience. All of this reports and studies conclude that there will be no unacceptable impact on highway safety and neither will there be a severe impact on the network. That evidence was followed up by Mr Hurlstone's evidence to this inquiry, which was tendered for cross-examination but to which there was no challenge, presumably because the R6 lacks any credible material with which to challenge it.

46. All of the Appellant's information, including evidence supporting its inputs as regards traffic distribution, was put before the Highway Authority, which has a statutory duty to ensure both highway safety and the smooth and efficient running of the highway network. It has scrutinised that evidence and has decided that there is no reasonable basis to object to this development on highway grounds.

47. The R6 evidence on this topic amounted to a mixture of complaints about perceived pre-existing problems in terms of traffic congestion (which it is not the responsibility of the Appellant to fix), misinformed speculation about driver behaviour, and the cumulative impacts of committed development (all of which have been assessed to the satisfaction of the Highway Authority). As

explained by Mr Hurlstone, the access has been designed so as to ensure no right turn out and no left turn in. Conditions are imposed to monitor and enforce driver behaviour.

Local Economy

48. The R6 evidence on alleged adverse impacts on the local economy was no such thing – it amounted to no more than speculation and assertion that the people would stop sending their children to the local schools in sufficient numbers to threaten the viability of the schools, and that people would stop visiting the area and using local facilities to such an extent as to result in local businesses closing down. No evidence was presented from anywhere in the country to suggest that a quarry of any sort, let alone a phased sand and gravel quarry, has this impact on the local economy.

49. The R6's case on impact on local economy is parasitic on its characterisation of the impacts of this operation in terms of noise, dust, health impacts and visual impacts. Because it has persuaded itself that all of these effects will be catastrophic, it follows in its mind that locals will begin to move out and visitors will cease to visit. On behalf of the Appellant we can offer no cure for a closed mind, nor for a mind-set that is suspicious of and refuses to accept the professionalism of those who have studied and trained for years to assess impacts in an objective way by reference to nationally and locally set standards, even when the conclusions of such professionals are supported by suitably trained people employed by the Mineral Authority whose job it is to scrutine evidence submitted in support of applications for planning permission.

50. What we can point to is Mr Toland's evidence that mineral working has taken place for centuries in areas which are now recognised as some of most beautiful and scenic places in the country. In England 47% of quarries are located either inside National Parks or AONBS, or within 5km of their boundaries. These areas attract millions of visitors each year. There is no

evidence of businesses closing down around these quarries, or people pulling their children out of school.

51. Finally on this point, the R6's case on economic impacts flies in the face of Govt. policy. If mineral extraction is bad for the economy, as the suggested by the R6, the Govt. would not be instructing decision-makers to attach 'great weight' to the benefits of mineral extraction, 'including to the economy'.

MATTER 4: GB OPENNESS AND PURPOSES

52. The starting point is to ask whether this is a proposal that falls within NPPF para.149 or para. 150. If the development, or any part of it, falls within para. 149 it will by definition be inappropriate (regardless of what impact it has on GB openness and purposes). If it falls within para. 150 it will be appropriate development, unless it fails to preserve GB openness and/or conflicts with GB purposes.

53. In order for it to fall within para.149, the Council needs to establish that this is a proposal that includes the 'construction of new buildings'. It will be noted that:

    a. at no point in the 2.5 years that this application was with the mineral authority did it indicate that any part of this development fell within para.149.

    b. There is not even a hint in the 250+ pages of the RTC that this issue arises.

    c. It was not a point taken by any objector (and there has been no shortage of objectors, or points taken by them).

d. The RFR alleges 'unacceptable impact on the openness of the GB', an unnecessary allegation if this development falls within para.149 because if within para.149 it would be inappropriate development requiring VSC regardless impact on openness.

e. There is not a single mention of para. 149 in the Council's SoC, or any of the DP plan policies that deal with the construction of new buildings in the GB

f. There is not a single mention of para. 149 in the Council's written evidence, nor of any of the DP plan policies that deal with the construction of new buildings in the GB.

g. CW set out all components of the proposed development at his paragraph 4.32, including the site office and welfare facilities, but did not say that the latter (unlike all the other components) constituted inappropriate development because they amounted to the 'construction of new buildings' in the GB and thus fell into para. 149, let alone explain why this element fell outwith the mineral operation.

h. CW at para.4.35 lists the 'offices' within a list which ends with the words 'and other ancillary facilities', thereby accepting that everything that falls within the list is ancillary to the mineral operation;

i. CW at para. 4.66 makes it clear beyond doubt that his case is based solely on the concept of 'tipping point', something that is not relevant at all to NPPF para. 149.

54. Points which are taken by advocates at the 11th hour and added via Examiniation in Chief are rarely good points, and this point is no exception to that rule, as we seek to demonstrate below.

55. Section 55 of the 1990 Act defines 'development' to mean the carrying out of 'building, engineering, mining or other operations.' This proposal is clearly for a mining operation. It is not for a building <u>and</u> mining operation, nor does the mining include any other operations. No one could reasonably contend otherwise.

56. The Council accepts that mineral extraction should 'include plant and infrastructure necessary to facilitate the winning and working of minerals', and appears to have no objection to those parts of the development that go beyond plant and machinery (such as for example the car park). So it would appear that Council accepts that the test for deciding whether something falls within the definition of a mining operation is not what that something is (i.e whether a building, a car park or something else) but whether it is 'necessary' to facilitate mineral extraction.

57. The Appellant agrees that this is the right approach, and if there were any doubt, it is removed by reference to *Europa Oil and Gas* (CD 12.07) (emphasis added):

"However, any correct analysis of the proviso to NPPF 90, which is not what paragraph 17 purports to provide at all, has to start from the different premise that such exploration or extraction can be appropriate. <u>The premise therefore for a proper analysis is that there is nothing inherent in the works necessary, generally or commonly found for extraction, which would inevitably take it outside the scope of appropriate development in the Green Belt"</u> (para. 64)

As Mr Banner accepted, some level of operational development for mineral extraction, sufficiently significant as operational development to require planning permission has to be appropriate and necessarily in the Green Belt without compromising the two objectives. Were it otherwise, the proviso would always negate the appropriateness of any mineral extraction in the Green Belt and simply make the policy pointless. <u>Extraction is generally not devoid of structures, engineering works and associated buildings. The policy was not designed to cater for</u>

fanciful situations but for those generally encountered in mineral extraction' (para.65)

"Secondly, as Green Belt policies NPPF 89 and 90 demonstrate, considerations of appropriateness, preservation of openness and conflict with Green Belt purposes are not exclusively dependent on the size of building or structures but include their purpose. The same building, as I have said, or two materially similar buildings; one a house and one a sports pavilion, are treated differently in terms of actual or potential appropriateness. The Green Belt may not be harmed necessarily by one but is harmed necessarily by another" (para. 66)

"If paragraph 90 NPPF is of any purpose, the mere fact of the presence of the common structural paraphernalia for mineral extraction cannot cause development to be inappropriate" (para. 75)

58. These paragraphs are relevant to the assessment of impact on openness (and therefore whether a given development falls within para. 150), but they are also relevant in supporting the proposition that mineral extraction will inevitably require structures, engineering works and associated buildings. So if portacabins are brought onto site to serve the purpose of the mineral extraction operation (to provide space for offices, welfare facilities and training), their introduction cannot be characterised as 'the construction of new buildings' in the GB as mentioned in NPPF para.149. Any other interpretation would mean that mineral extraction would always fall within para. 149, because it is impossible to see how a mineral operation could possibily be carried out without offices and welfare facilities.

59. The disagreement that CW has with above analysis is not one of principle (for the reasons set out above, he appears to accept the principle), but one of fact. He stated in his examination in chief, without any warning or evidence or analysis, that the size of the portacabins shown on the plans were 'excessive' for an operation of this size. This argument has nothing to do with the definition of 'building', rightly so because buildings (if necessary to

facilitate the mineral operation) fall within the definition of mineral operation.Thus the case of *Skerrits* is a red-herring.

60. So the only question for the Inspector is whether to accept CW's non-evidenced, 11th hour assertion that the portacabins the Appellant proposes are 'excessive' and not needed to facilitate thevmineral extraction. We invite the Inspector to reject his assertion. If these buildings were unnecessarily large (a) the mineral authority would have said so right at the outset and sought further justification of their size from the Appellant and (b) the Appellant would not be going to the trouble and expense of bringing them onto site because the extra space cannot be used for anything that is not connected to mineral extraction without it constituting a breach of planning control. LT's evidence to the effect that what is proposed is required to satisfy health and safety, and is no larger than he would expect to see for an operation of this size, is to be preferred.

61. Proceeding on the basis that this development falls within para. 150, the next question is 'does it preserve the openness of the Green Belt?' This requires an exercise of planning judgment having regard to all of the facts, but the Appellant submits that once the question is approached with what the courts have described as the right 'mind-set', the answer in this case is fairly obvious.

62. The *Europa Oil and Gas* case provides decision-makers with the correct premise from which to start the assessment of appropriateness when considerating applications for development that falls within NPPF para.150. He said that one must accept 'some level of operational development for mineral extraction, sufficiently significant as operational development to require planning permission', as falling within the remit of appropriateness. He also explained why: 'Were it otherwise, the proviso would always negate the appropriateness of any mineral extraction in the Green Belt and simply make the policy pointless' (para. 65).

63. As a direct consequence of the above premise, the Judge explained that the decision-maker should not hold that operational development associated with mineral extraction undermines openness, and thus is inappropriate, if the development in question is inherent to (i.e a necessary part of) mineral extraction operation. To do otherwise would undermine the policy rationale that underpins the decision to list mineral extraction within paragraph 150. To quote the Judge again, 'The premise therefore for a proper analysis is that there is nothing inherent in the works necessary, generally or commonly found for extraction, which would inevitably take it outside the scope of appropriate development in the Green Belt' (para.64).

64. The case also provides the decision-maker with guidance as to what type of development he or she should be prepared to accept as consistent with preserving openness. The Judge expressly cited 'structures, engineering works and associated buildings' as common features of a mineral extraction proposal, and warned decision-makers to avoid a 'fanciful' approach (para. 65). The Appellant interprets this to mean that one should be realistic about what will be required happen on site, both in terms of activities and associated paraphernalia, if the mineral is to be extracted. As the Judge said, 'If paragraph [150] NPPF is of any purpose, the mere fact of the presence of the common structural paraphernalia for mineral extraction cannot cause development to be inappropriate' (para.75).

65. The case also explains that the decision-maker's assessment of impact on openness (and thus decision on appropriateness) should not be made without keeping an eye on the purpose of the buildings, structures etc that are alleged to undermine openness. He said this: 'as Green Belt policies NPPF 89 and 90 [now 149 and 150] demonstrate, considerations of appropriateness, preservation of openness and conflict with Green Belt purposes are not exclusively dependent on the size of buildings or structures but include their purpose' (para. 66). What this means development should not be held to undermine openness simply because of its size – regard must be had to its purpose. If its purpose is to facilitate the mineral extraction its size (provided

it is reasonable and proportionate) should not lead the decision-maker to conclude that it harms GB.

66. Finally on the specifics of *Europa Oil and Gas*, the learned judge also emphasised that the reason why mineral development is potentially appropriate development is because of its duration and reversibility, and because they can only be mined where they are found – 'Green Belt is not harmed by such a development because the fact that the use has to take place there, and its duration and reversibility are relevant to its appropriateness and to the effect on the Green Belt' ((para.68). So in addition to all of the above matters, these matters (duration, reversibility and the fact that minerals can only be mined where they are found) must also go into the mix when assessing impact on openness.

67. It will be recalled that Ouseley J's decision was appealed, but upheld in the CA, and the CA judgment was itself than approved by the SC in the Sam Smith case (CD13.18). In this regard, the Appellant relies on para.28 of Sam Smith, where the CA judgment in *Europa Oil and Gas* is cited, and where the CA's point that the mind-set for assessing mineral extraction must keep in mind that it is potentially appropriate development is approved by the SC. The Inspector's attention is also drawn to the comment added by the SC (at the bottom of para.28) about what was not thought sufficient in Europa Oil to detract from openness: 'it is significant that the impact on the Green Belt identified by the inspector (including a 35 metre drill rig and related buildings) was not thought necessarily sufficient in itself to lead to conflict with the openness proviso.'

68. Before returning to the question of whether the appeal proposal conflicts with openness, it is also important to set out what the SC said in *Sam Smith* about the factors that are relevant when assessing whether mineral extraction undermines GB openness.

69. Firstly, the SC made it clear that the case-law that emphasises the visual dimension of Green Belt must be approached with care when assessing the impact of mineral extraction, because that case-law is concerned with the construction of buildings in the GB, which is by definition inappropriate (unless it falls within a specified exception), whereas mineral extraction is appropriate development unless the proviso applies. The reason why visual impact is much more important in the former case is that limited visual impact cannot make appropriate that which is by definition inappropriate (see para.23). The case of *Turner* (which pressed the distinction between volumetric and spatial) was placed in its proper factual context – it was a case dealing with an express provision within GB policy (redevelopment that would not have greater impact on openness etc), where the visual comparison between the baseline and the proposal is unavoidable. As the SC said, 'it tells us nothing about how visual effects may or may not be taken into account in other circumstances.' (para.25).

70. Secondly, and importantly, the SC was at pains to emphasise that when assessing the impact of mineral development on openness the tail should not be allowed to wag the dog. It did so by making the point that the openness and purposes provisio now found in para. 150 in respect of minerals was not found in PPG, but that it (the SC) did 'not read this as intended to mark a significant change of approach … to my mind the change is explicable as no more than a convenient means of shortening and simplifying the policies without material change.' The Appellant submits that the way to give effect to this observation by the SC is to apply the approach set out in Europa Oil and Gas above, namely accept that that which is normal and to be expected in mineral extraction should not be viewed as as detracting from openness.

71. Thirdly, and finally, the SC endorsed the proposition that 'openness' is the 'absence of built development'. It explained this definition expressly by reference to the distinction between buildings (inappropriate by definition) and the categories of development within para. 150 (which are appropriate) (para. 40). In this same paragraph it contrasted openness with 'urban sprawl',

which it equated with built development (i.e buildings). Any doubt about this is removed by para.22 of the judgment, which is of central importance to the present case (emphasis added):

'*Openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt. As PPG2 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 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'.*

72. The above therefore provides the correct legal context for answering the question, 'will this development preserve openness'? This legal context is wholly missing from the evidence of CW, and where he did cite a passage from the *Sam Smith* he failed to understand it or apply it. With all respect, this flaw in approach has been compounded by the Council's Counsel, who has in her XX of the Appellant's witnesses not only failed to show understanding of the above law, but expressly set her face against it, insisting that simply because something was inherent in a mineral operation did not mean that it preserved openness.

73. We invite the Inspector to contrast the approach taken by CW with the approach taken by the Head of Planning in the RTC, who understood and applied the law correctly and came to the only conclusion that one can reasonably come to in this case, which is that this development does not engage the proviso to para.150. At pdf p.100-101 paragraphs 451- 461 he explained his reasoning in the following way:

a. The proposals (including the offices/welfare facilities) were 'all part and parcel of the proposed mineral extraction for the purposes of applying Green Belt policy' (para.451);

b. Given the contained nature of the site the visual impacts did not undermine openness (para.458);

c. He cited and applied Lord Carnwath's dictum that a quarry was not urban sprawl but a barrier to urban sprawl (para.459);

d. Vehicle movements were at a level not unexpected for this type and scale of operation, 'so it would not be able to operate where minerals are found if it did not have this level of infrastructure and vehicle movements … so this in itself could not make it inappropriate' (para. 459);

e. The site would be restored 'to an open state following completion of extraction and would be no more built up on completion of the development as a result of the proposal as it is now', and he expressly gave effect to the special status of mineral extraction and cited *Europa Oil and Gas* in support (para. 459);

f. He understood and applied the correct lesson from the case-law:

'It is considered that the proposal is in line with any typical mineral development in the Green Belt, and it is assessed that this site should benefit from the exceptions that are clearly provided for in the NPPF for mineral sites. There would be impacts, but only of a temporary duration, and relatively short for mineral extraction, with an appropriate restoration programme, back to a beneficial status in the Green Belt. The NPPF clearly envisages that mineral extraction should benefit from the exemption in paragraph 150, and this proposal should benefit from those exemptions as it comes within the intended scope.'

74. In XX Ms Clover asserted that the Appellant's witnesses had failed to assess the impact of the proposal on GB openness. You have all of the Appellant's evidence before you, both that provided for this inquiry and all of the evidence (including the Planning Statement and the ES) that was provided at the application stage). In response to Ms Clover's assertion that we ask that the Inspector ask himself two questions. Firstly, in the light of all of that evidence, does he really need more pages assessing the impact on openness? Secondly, if the appellant did not assess the impact on openness, how was it that the Head of Planning was able to draw upon and agree with the material submitted by the applicant in coming to his conclusion that this proposal would preserve openness? It will be noted that in his written evidence, LT supported his assessment of the impact on openness by expressly referring to and endorsing what was said by the Head of Planning in the RTC (see LT para. 4.41 to 4.4.13), an analysis which the Head of Planning himself drew from the material that LT had either submitted himself or co-ordinated the submission of during the lengthy determination period.

75. We invite the Inspector to contrast that with CW's failure to give effect to what are the key material factors that feed into the assessment of impact on openness.

    a. Firstly, as CW accepted, there is nothing more that the Appellant could do but had failed to to minimise the visual and spatial impacts of the mineral extraction.

    b. Secondly, there are no structures, buildings or associated paraphernalia on site that are not inherent to the mineral extraction, and thus an unavoidable part of it (we do not repeat what we said above about CW's 11th hour focus on the offices/welfare facilities).

    c. Thirdly, as CW accepted the top soil has to stay on site and it makes perfect sense to use it to make bunds that can be grass-seeded. This then serves the purpose of complying with guidance on the handling

of soils, is visually less obstrusive and jarring, assists with both noise and dust mitigation, and hides the actual extraction operation from view. No one suggested what else could be done with top soil, other than Mr Partridge whose idea of spreading it on other parts of the site would breach soil handling good practice and take the rest of the site out of agricultural use. As LT explained, bunds are an integral feature of a sand and gravel quarry, and he does not know of any such operation that does not have bunds.

d. Fourthly, the use is temporary, 11 years is relatively short for a mineral extraction operation.

e. Critically, because it undermines CW's assessment that the use is not temporary), upon restoration the site will be open (i.e devoid of any built development). We return to CW's criticism of the restoration under the heading of VSC, but regardless of whether the restoration is good or bad in landscape terms, it cannot be said to undermine openness because that is simply the absence of built development (unless one were to accept Mr Partidge's bizarre assertion that a restored parkland landscape devoid of any build development should be viewed as urban sprawl).

76. These 5 factors, placed in the context of the above case law, are sufficient to demonstrate that his proposal complies with the requirement to preserve openness. CW's assement of the visual impact of the bunds was no different to that which you would expect from a landscape planner, save that CW is not a landscape planner. It is also very difficult to see how the Council can accept that the development is acceptable in terms of visual impact (as accepted by its Landscape Officer), but that the visually it has an unacceptable impact on the openness of the GB. The distinction sought to be drawn amounted to no more than angels on pin-heads.

77. Turning briefly to GB purposes, the proposal does not breach NPPF para. 138 (a). This is for two interconnected reasons:

    a. The SC has told us that a quarry has the effect of preventing urban sprawl (the fundamental aim of GB policy – see NPPF para.137). Therefore it cannot of itself be urban urban sprawl. We would add to this that a quarry cannot be described, in planning terms, as an urban land use.

    b. Paragraph 138(a) in the NPPF must be read in its entirety – the 'of' is important, as is the word 'unrestricted'. The sprawl has to be 'of' a large built up area. This site is not connected to a large built up area, and therefore its development cannot be seen as leading to the sprawl of any such area.

78. Neither does it breach the third purpose, safeguarding the countryside from encroachment. This is for all of the reasons set out in the case law above as to how one should interpret and apply the policy in para. 150. Minerals can only be mined where they are found; they are not realistically going to be mined anywhere other than in the countryside, and the use is temporary and therefore this purpose (safeguarding from encroachment) will continue to be served post-restoration.

79. Contrary to the R6 case, purpose 2 (merger) is not engaged. None of the settlements are towns (and express requirement of the policy); this development will not as a matter of fact lead to them merging in any event, and (perhaps most importanty) the purpose is about preventing permanent merger and is not directed to a use that will be temporary (or, alternatively, the temporary nature of the use is relevant to an assessment of whether the purpose is breached).

80. Finally, there is no heritage assessment to support the assessment that this site provides a setting that safeguards the special character of towns (see the

point about towns above), or that that this temporary development would fail to preserve that setting.

MATTER 5: VERY SPECIAL CIRCUMSTANCES

81. This section is relevant if and only if the Inspector rejects the Appellant's case that this development constitutes appropriate development. If that case is accepted, the development accords with the DP, no one has suggested there are material considerations that indicate that the proposal should be determined otherwises than accordance with the DP, and accordingly permission should be granted 'without delay' (NPPF 11(c)).

82. It is not the purpose of this section of the Closing Submissions to repeat the list of VSC relied upon by the Appellant or their weighting (they are set out in the evidence of LT). The aim here is to repond to the points taken by the Councl and the R6 in evidence.

Economic Benefits

83. We have already responded to the R6 case that the weight to economic benefits should be reduced because of alleged harms to the local economy. We do not repeat those points.

84. The R6 sought to attack the Appellant's assessment of jobs created, and expenditure within the local and national economy. But it provided no evidence as to why the Inspector should disbelieve the Appellant, who is an experienced operator of quarries. It knows how many empoyees will be needed on site to run this operaton, how many off-site and head office jobs this is likely to create, and how much money the operator will spend to set up and keep the operation going.

Need

85. The NPPF is clear that 'great weight' should be attached to the benefits of mineral extraction, including the economy. So the starting point is great weight, regardless of the level of mineral supply. It is relevant to ask, in deciding what 'great weight' means in terms of the importance the Govt. attaches to mineral extraction, where else the NPPF uses the term 'great weight'. It uses it in reference to National Parks and AONBs etc (para. 176) and heritage assets (para. 199). That gives the decision-maker a handle on where the Govt. places mineral extraction in its list of priorities.

86. That 'great weight' can only increase when the supply of minerals is below (and we say, well below) the Govt.'s minimum requirement of 7 years. The PPG indicates that we are in the territory of 'urgent' need. Even if we factor in permissions granted since the last published assessment, and we assume that all appliations currently pending determination will be granted (a dangerous assumption as explained above), the supply will still remain below 7 years (4 years plus 1.23 years (taken from CW's two applications that remain pending) takes the supply to 5.12 yearrs). The weight should therefore be even greater than great weight (very great weight?).

Restoration

87. The Appellant does not claim that restoration *per se* should attact positive weight in the VSC balancing act. The fact of restoration is one of the factors that goes into the assessment to support the argument that this development will preserve openness. What the Appellant claims goes to VSC is that the restoration provides a beneficial impact over and above the base-line, as accepted by the County's Landscape officer and as (we say) is obvious from the range of improvements and benefits that will be delivered.

88. CW sought to reduce the weighting to neutral, based on harm to landform. However, that is to go behind the agreement of the County's Landcape

officer, who agreed that the impact of the restoration would be beneficial. It is not tenable to suggest, as the County's witness and advocate appear to be suggesting, that the Landscape Officer would not have had regard to change to landform when assessing whether the retoration was merely acceptable or positively beneficial. Landform (and impact on landform) form one of the key inputs into any LVIA.

89. Also, CW, not being a landscape expert, does not explain in his evidence how and why the proposed restoration landform is harmful. He made a reference to the loss of long range views (which is in any event a visual matter, not a matter of harmful landform), but when asked was unable to identify which views would be lost as a result of the lower landform.

Alternative Sites

90. It is important to understand the legal position on when alternative sites are relevant.

91. There is no general principle of law or policy that a decision-maker must have regard to alternatives. Neither is there any law or policy which says that alternatives are relevant and/or must be considered when a proposal involves the use of GB land. The general principle is that an application should be judged on its own merits.

92. Alternatives are only relevant where it is agreed there will be harm, and an applicant relies upon need to justify the harm. The question then arises as whether the need could be met elsewhere. In this connection, it matters not whether the harm is to Green Belt or some other policy. This does not affect how one applies the law on when alternatives must be considered.

93. If an objector wishes to argue that the identified need can be met on an alternative, less harmful site, it is for the objector to identify that alternative site and demonstrate that (a) it is less harmful and (b) that it will meet the

need identified.

94. The subject of alternative sites is considered in depth within the RTC at paragraphs 408 to 425, where the relevant case law is set out (including that which states that little weight is to be given to unevidenced assertions about the existence of alternatives). The Appellant cannot usefully add much more to that analysis, and relies upon it. We restrict ourselves to making the following points:

    a. The ES does consider alternative sites, and concludes that there are no alternative sites that can meet the need identified in terms of the locations to be served by the need and (as explained by LT in evidence) the quality of the material that is needed to serve that need;

    b. No one has identified a site that would meet the need the Appellant has identified, both in terms of the locations to be served and the quality of the material.

    c. All of the sites pending determination have been discussed in evidence at this Inquiry, and it has been shown that even if they were all to be granted permission there would still be a significant shortfall in the 7 year supply.

    d. As the cse of Esmond Jenkins shows (paras. 25-30), it is not necessary for a decision-maker on an application to in effect carry out the job of a Site Allocations Inspector, which is what would be required to determine which, if any, of the identified and available sites perform better than the application site when all planning considerations are taken into account. That is especially true in a case such as the present, where no one has identified a site that is available to meet the need now.

e. Finally, as the learned judge observed in the Esmnond Jenkins case, the R6's argument leaves out of account the obvious fact that '*if alternative sites with owners willing to seek planning permission had been readily available, there would not have been a significant and increasing shortfall in the sand and gravel landbank*' (para.28).

OTHER MATTERS

95. The Inspector raised the matter of impact on BMVAL. All of the facts as to how much BMVAL will be affected, and how much of it will be restored, are set out in the ES (CD1.03) at Chapter 13. The most relevant section is 13.4, which explains soil handling procedures and that of the 43.7ha of BMVAL 32.6ha will be restored. It would have been possible to restore all of it, but the difference was believed to better used to provide ecological benefits. It will be noted that using it for these purposes does not lead to the permanent loss of this area of BMVAL, because the soils can always be put back to agricultural use.

CONCLUSION

96. For all of these reasons we respectfully invite the Inspector to allow this appeal and grant planning permission.

Satnam Choongh
Number 5 Chambers

8 MARCH 2023