

WORCESTERSHIRE COUNTY COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78 APPEAL

Appeal by **NRS Aggregates Ltd** against the refusal of planning permission by **Worcestershire County Council** for:

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

on **land at Lea Castle Farm, Wolverley Road, Broadwaters, Kidderminster, Worcestershire.**

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

County Council Reference: 19/000053/CM

STATEMENT OF CASE

1.0 Introduction and Background Information

1.1 This Statement of Case (“SoC”) relates to an appeal lodged by NRS Aggregates Ltd (“the Appellant”) to the Planning Inspectorate (“PINS”) on 7th November 2022 (PINS reference APP/E1855/W/22/3310099). The Statement sets out the case for Worcestershire County Council as the Minerals Planning Authority (“WCC” or “the Council”) in respect of the appeal which is made following the decision of the Council to refuse planning permission for application 19/000053/CM at Lea Castle Farm, Wolverley Road, Broadwaters, Kidderminster on 27th May 2022.

1.2 The appeal development is described as follows:

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

1.3 Following a High Court challenge to the Inspector’s original decision¹ the Court ordered that the appeal decision was to be quashed, and the appeal be re-determined, on the basis of a ground of challenge (Ground 1) against the approach taken by the Inspector to the weight to be attached to biodiversity net gain as set out in the decision². A second ground of challenge (Ground 2) alleging a breach of the Inspector’s duty under section 38(6) failed.

1.4 The re-determination of the appeal will take place by way of an Inquiry, commencing on a date yet to be confirmed.

1.5 As invited by PINS, the Council’s current case is set out here in respect of the appeal, having regard to the material changes in circumstances that have arisen since the original decision was issued.

1.6 This SoC provides a description of the site and its surroundings, the proposed development, relevant planning history, national and local planning policy context and relevant guidance, the Council’s case with regard to the reasons for refusal and outlines their statutory duties.

¹ The original decision for 3310099, dated 5th May 2023, dismissed the appeal.

² NRS Saredon Aggregates -v- SSLUHC & another [2023] EWHC 2795 (Admin)

- 1.7 Further details in relation to these matters will be provided within an updated Statement of Common Ground (“SoCG”) to be prepared by the Council and the Appellant.
- 1.8 The Council screened and scoped the application in compliance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. It confirmed the application required an Environmental Impact Assessment and an Environmental Statement was submitted by the Appellant.
- 1.9 This SoC is prepared on behalf of the Council and in accordance with the Inquiries Procedure Rules (SI 2000/1625) and having regard to the Inspectorate’s ‘Procedural guide: Planning appeals – England’ (updated 13 June 2023) (“the Procedural Guide”), in particular section 11 Inquiries.

2.0 Site and Appeal Proposals

- 2.1 The appeal site measures approximately 46 hectares in area and is primarily comprised of agricultural land within the historic parkland setting of Lea Castle. The site is located approximately 2.3 kilometres north of Kidderminster town centre, approximately 700 metres and 890 metres east of the villages of Wolverley and Fairfield, respectively, and approximately 370 metres south of the village of Cookley.
- 2.2 The Appellant seeks planning permission for 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.
- 2.3 The Appellant seeks to extract approximately 3 million tonnes of sand and gravel from an area totalling approximately 26 hectares within the site. Extraction would take place at a rate of approximately 300,000 tonnes of sand and gravel per annum.
- 2.4 A detailed description of the site location, planning history and proposed development will be provided within the updated SoCG.

3.0 Development Plan Policies and Guidance

3.1 Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Act 2004 together require that planning applications must be determined in accordance with the statutory Development Plan unless material considerations indicate otherwise.

3.2 The requirements in determining applications “*in accordance with*” the Development Plan does not mean that an application must comply with each and every policy, but it is approached on the basis of the Development Plan taken as a whole. This reflects the fact, acknowledged by the courts, that Development Plans comprise broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. The statutory adopted Development Plan for the appeal site comprises the following:

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

3.3 The policies of the Development Plan most important for the determination of this appeal are provided within the SoCG.

3.4 Reference to the following will also be made within the Council’s proof of evidence, as material considerations:

- National Planning Policy Framework (“NPPF” or “the Framework”) (revised in December 2023)
- The National Planning Policy for Waste (2014) (“NPPW”)
- National Planning Practice Guidance (“PPG”)
- Institute of Air Quality Management (“IAQM”) ‘Guidance on the Assessment of Minerals Dust Impacts for Planning’, May 2016.
- Town and Country Planning (Environmental Impact Assessment) Regulations 2017
- Environment Act 2021

- 3.5 The Council will refer to other planning permissions, planning policy background documents, appeal decisions and case law relevant to the appeal in evidence. These will be provided in agreement with the Appellant within an updated schedule of Core Documents.
- 3.6 The Council will refer to the publication of the latest Local Aggregate Assessment (“LAA”), dated 15th January 2024, from which the Council’s landbank position can be subsequently calculated. The Council will provide a Landbank Position Statement following the publication of the LAA which will be considered in evidence and captured in the schedule of Core Documents.

4.0 Reasons for refusal

4.1 The application, now the subject of this appeal, was considered by WCC Planning and Regulatory Committee on 24 May 2022. The Committee considered an Officers Report (“OR”), the Appellant’s planning application submission and the submissions made by interested parties, and resolved to refuse planning permission for the following reasons:

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

4.2 In the period since the decision notice was issued by the Council, the Minerals Local Plan has been adopted and the County of Hereford and Worcester Minerals Local Plan has been superseded. Reason for refusal 1 refers specifically to Policy 2 of the superseded Local Plan. No policy within the adopted Minerals Local Plan provides consistency with Policy 2, and as such reason 1 is not defended by the Council within the appeal.

4.3 During the programme for the original Inquiry, the Environmental Services Department of the Planning Inspectorate wrote to the Appellant to request additional submissions with regards to ecology, noise and cumulative impact under Regulation 25 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. The Appellant submitted this information in February 2023 and on review, the Council concluded that the Appellant had provided sufficient information to determine that the proposal, in combination with other developments, would not cause amenity harm with regards to noise or dust impacts to residential dwellings or Heathfield Knoll School and First Steps Nursery, subject to the implementation of proposed mitigation measures. As such, reason 3 is not defended by the Council within the appeal.

- 4.4 Having regard to the extant Development Plan and material considerations, it is concluded that the proposal would not have detrimental material impact on the local economy. As with the first appeal, the Council will therefore not be defending reason for refusal 4 (*“unacceptable impact on the local economy”*) within the appeal.
- 4.5 As with the first appeal, the Council will not be defending reason for refusal 5 (*“Loss of 2 Tree Preservation Order (TPO) trees”*) as it is concluded that, subject to the implementation of appropriate planning conditions, the loss of no.2 TPO trees would be sufficiently mitigated for.
- 4.6 As with the first appeal, the Council will not be defending reason for refusal 6 (*“unsuitable bridleway next to the Wolverhampton Road (A449)”*) as it is concluded that, on balance, the proposal would not cause harm to the quality of bridleways located within and adjacent to the site.
- 4.7 As with the first appeal, the Council will not be defending reason for refusal 7 (*“unacceptable impact on highways”*) as it is concluded that, subject to the implementation of appropriate planning conditions, the proposal would not cause harm to the highways network.
- 4.8 As with the first appeal, the Council will not be defending reason for refusal 8 (*“unacceptable general impact on environment and wildlife”*) as it is concluded that, in having regard to the extant Development Plan and material considerations, that subject to the implementation of appropriate planning conditions, the proposal would not have a detrimental impact on environment and wildlife.
- 4.9 As with the first appeal, the Council will not be defending reason for refusal 9 (*“unacceptable impact on health of local population”*) as it is concluded that, subject to the implementation of appropriate planning conditions, the proposal would not have a detrimental impact on the health of the local population.

4.10 Having regard to the extant Development Plan and material considerations, the Council will be defending reason for refusal 2 (*“unacceptable impact on openness of the Green Belt”*) within the appeal.

4.11 The Council’s intention to defend reason for refusal 2 in evidence was previously agreed in common ground with the Appellant, and this will be captured again in the updated SoCG.

5.0 The Case for The Council

5.1 Having regard to Council's case, the main issues for the appeal are concluded to be the following:

Issue 1: The need for the proposed development with particular regard to the landbank position for sand and gravel and the need for inert waste disposal in the County.

Issue 2: The effect on the openness of the Green Belt, and the purposes of including land within it, and whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and relevant development plan policies.

Issue 3: The planning balance with particular regard to whether the proposal is inappropriate development and whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

5.2 Issue 1

The Council will explain that Policy MLP14 provides that WCC will seek to maintain a landbank of a least 7 years through the plan period and sufficient capacity of sand and gravel will be maintained to meet at least the guideline in the most recent Local Aggregate Assessment. The policy provides the scale of provision required across the plan period at part a) and the approach to be taken to securing that provision of supply from a combination of extant and new developments at part b).

5.3 Furthermore the Council will explain that paragraph 219 of the Framework provides that minerals planning authorities should plan for a steady and adequate supply of aggregates by, amongst other things, preparing an annual Local Aggregates Assessment (LAA) (part a)), by making provision in minerals plans and maintaining landbanks of at least seven years for sand and gravel, whilst ensuring that the capacity of operations to supply a wide range of materials is not compromised (part f)).

5.4 Reference will be made to the Council’s Local Aggregate Assessment of January 2024, which covers the period up to 31st December 2022 and which demonstrates that, based on production guideline and the stock of permitted reserves of 5.06million tonnes, Worcestershire had a landbank of 7.59 years on 31st December 2022.

5.5 Reference will be made to the extent of planning permissions for mineral extraction that have been granted by WCC since 31 December 2022 and the impact this has had on the landbank of permitted reserves; together with the extent of mineral extraction planning applications that are to be determined and the potential impact that planning consent would have on the landbank as a result.

5.6 Whilst it will be explained that footnote 77 of the Framework states that *“longer periods may be appropriate to take account of the need to supply a range of types of aggregates, locations of permitted reserved relative to markets, and productive capacity of permitted sites”* and it is recognised that the proposal would increase the landbank if permitted, the Council will identify that, having regard to the factors above, that a seven year landbank for sand and gravel can be reasonably demonstrated.

5.7 As such, it will be demonstrated that the proposal would not accord with policies MLP3 and MLP14.

5.8 Issue 2

The Council will explain that Policy WCS 13 of the adopted Worcestershire Waste Core Strategy permits waste management facilities in areas designated as Green Belt where the proposal does not constitute inappropriate development, or where very special circumstances exist. Furthermore, it will be explained that Policy MLP 27 states that:

a) minerals extraction will be supported where *“a level of technical assessment appropriate to the proposed development demonstrates that, throughout its lifetime, the mineral extraction and/or engineering operations will:*

- *preserve the openness of the Green Belt; and*

- *not conflict with the purposes of including land within the Green Belt*

b) *“Where any aspect of the proposed development is inappropriate³ in the Green Belt - including mineral extraction and/or engineering operations that cannot satisfy the tests in part (a) above - it will only be supported where a level of technical assessment demonstrates that very special circumstances exist that mean the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations”.*

5.9 Consideration will be given to Wyre Forest Policy DM.22, which states that development in the Green Belt will not be permitted except with very special circumstances (“VSCs”) unless one of parts a) to g) apply to development; where part g) details: *“Other operations, including changes of use which preserve the openness of the Green Belt and do not conflict with the purposes of including land within it”.*

5.10 The Council will refer to the Framework, where at paragraph 152 it states that *“inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances”*; at paragraph 153 states that *“local planning authorities should ensure that substantial weight is given to any harm to the Green Belt”* and that VSCs *“will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations”.*

5.11 The Council’s evidence will demonstrate that there is consistency between the Development Plan and the Framework, in expecting development to preserve the openness of the Green Belt and to not conflict with its purposes. Inappropriate development requires identification of VSCs to outweigh such Green Belt harm, and any other harm resulting from the proposal.

³ With inappropriateness defined by paragraphs 152-157 of the Framework

- 5.12 The Council will recognise that at paragraph 155 of the Framework it is noted at part a) that mineral extraction *“is also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it”*; but that this therefore will come down to the specific details of the proposals; determining the “tipping point” beyond which minerals excavation would not preserve openness and/or conflict with the purposes of including land within the Green Belt and become inappropriate in the Green Belt, so that the exception at paragraph 155 would no longer apply. This will depend on the particular circumstances of the proposal as a matter of fact and degree, which the Council will refer to.
- 5.13 The Council will refer to *Timmins*⁴, *Turner*⁵ and *Samuel Smith*⁶ in evidence, and will demonstrate that the proposed development does not preserve the openness of the Green Belt and conflicts with two of the purposes of including land within it, having regard to Framework paragraph 143 and will conclude that the development conflicts with purposes a) “unrestricted sprawl” and c) “encroachment”.
- 5.14 The Council will refer to evidence that demonstrates the fact that the appeal site is located within North West Worcestershire “Strategic Corridor” for solid sand and gravel and silica reserves as identified within the Minerals Local Plan, but that whilst all of the Corridor is located within the West Midlands Green Belt, this does not mean that it is all of equal importance of it.
- 5.15 The Council will demonstrate in evidence the differing contributions land parcels within the Corridor make to the Green Belt, referring to Wyre Forest Local Plan Examination documents and planning permissions, including Green Belt reviews Parts I and II and refer to the impact the appeal proposal would have on the contribution made by the appeal site and its immediate environs to Green Belt openness, having regard to its location; being adjacent to the Lea Castle Village development, south of Cookley, north east of Wolverley, north of Kidderminster and the built development on Sion Hill.

⁴ *Timmins v. Gedling BC* [2014] EWHC 654 (Admin)

⁵ *Turner v. SSCLG* [2016] EWCA (CIV 466)

⁶ *Judgment, R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant)* [2020] UKSC 3

- 5.16 It will be demonstrated in evidence that the appeal site and its immediate environs form the predominant remaining area of Green Belt between these settlements and has a heightened requirement to fulfil its Green Belt purposes as a result.
- 5.17 Given this, the Council will demonstrate in evidence that it is more sensitive to visual and spatial impacts on the openness of the Green Belt than other land parcels within the same corridor and that Phases 1, 2 and 3 of the works will give rise to detrimental effects on visual openness from western and southern viewpoints of the site; that Phases 4 & 5 of proposed operations will provide a detrimental effect on visual openness from north-western viewpoints of the site whilst the plant area will provide detrimental effects on visual openness until it is decommissioned.
- 5.18 The Council will identify that the predominant mitigation measure for visual impacts is the use of proposed screening bunds, and it will be demonstrated in evidence that their use will cut off any open views across the site, truncate views from public rights of way (“PRoW”) and cause harm in terms of the visual dimension of openness of the Green Belt. Further it will be concluded that the siting of the bunds themselves provide engineered features of incongruity, at odds with the natural landscape of the site for substantial periods of time; giving rise to a spatial impact on the openness of the Green Belt by way of their siting.
- 5.19 Consideration will be given to conclusions of *Europa Oil and Gas Ltd*⁷ with regard to the duration of the development and its temporary and reversible nature; however the Council will demonstrate in evidence that, given that the appeal scheme gives rise to a detrimental impact on the Green Belt at a period in time when the site is considered to have a heightened responsibility in performing its purposes effectively as Green Belt land, the duration of development does not provide mitigation to overcome this impact.
- 5.20 The Council will demonstrate in evidence that the development has a detrimental spatial and visual impact on the openness of the Green Belt across the lifespan of the development and insufficiently

⁷ *Europa Oil and Gas Ltd v Secretary of State for Communities and Local Government* [2013] EWHC 2643 (Admin)

preserves the openness of the Green Belt so as to be defined as appropriate development in Framework terms.

5.21 The Council will conclude that the appeal proposal is therefore inappropriate development in the Green Belt and VSCs must be provided to outweigh this harm, and any other harm.

5.22 Issue 3

Having regard to the Court of Appeal in *Redhill Aerodrome Ltd*⁸ the Council will recognise that the words 'any other harm' in the NPPF test do not mean only harm to the Green Belt. They mean any other harm that is relevant for planning purposes. The Council will demonstrate through evidence that less than substantial harm to the setting of North Lodges and Gateway of Lea Castle as a Grade II listed building will occur as a result of development, but that sufficient public benefit would be identified to outweigh this harm, having regard to the Framework test⁹.

5.23 Having regard to the Appellant's case, the Council agrees that the following are benefits of the scheme in planning terms:

- the proposals contribution to the Council's Sand and Gravel Landbank.
- the contribution of a minimum of 11 FTE jobs and the secondary economic effects of the development.
- the landscape benefits of the scheme, including enhancements to the PRoW network.
- the delivery of proposed biodiversity net gain.

5.24 In their evidence the Council will explain the weight that it considers should be attributed to these benefits.

⁸ The Court of Appeal in *Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government* [2014] EWCA Civ 1386

⁹ Paragraph 208 of the Framework.

6.0 Planning Balance

- 6.1 The Council will demonstrate that the identified harm provided by the appeal scheme to the Green Belt should, by definition, be given substantial weight.
- 6.2 Further, it will be demonstrated in evidence that the harm by reason of inappropriateness, and any other harm, is not clearly outweighed by other considerations, and the VSC's necessary to justify the development would not outweigh the harm. The appeal scheme will be concluded to be contrary to Policy WCS 13 of the Worcestershire Waste Core Strategy, Policy 27 of the Minerals Local Plan, Policy DM.22 of the Wyre Forest District Local Plan and contrary to national policy concerning the Green Belt.
- 6.3 For these reasons, the Inspector will be invited to dismiss the appeal.

7.0 Statutory Duties

- 7.1 The appeal site is not located within a conservation area and as such Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 does not arise. With respect to Section 66 of the aforementioned Act, the position of the Council is set out at paragraph 5.22.