

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

Re-Determined Appeal

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

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

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

Revised Statement of Case

April 2024

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Appendix 2 – Plan showing the revised bunds

1. Introduction

1.1 This Statement of Case has been prepared on behalf of NRS Aggregates Ltd (“the Appellant”) and is in respect to the re-determination of the appeal against the following planning application refused by Worcestershire County Council (WCC):

- Proposed sand and gravel quarry with progressive restoration using site derived and imported inert material to agricultural parkland, public access and nature enhancement (Planning Application Reference: 19/000053/CM).

1.2 This follows the High Court Judgment issued on 16th November 2023 in which Mr Justice Eyre quashed the appeal decision.

1.3 On 22nd February, the Appellant received a letter from the Planning Inspectorate (PINS) setting out details of the ‘re determination’ process. The following was set out within the letter:

“The Planning Inspectorate, on behalf of the Secretary of State, invites you:-

- *“To send further representations (including any statement of case and copies of any documents to which you intend to refer) covering any material change in circumstances (which would include any changes to the development plan position and new or altered material considerations which you think should/should no longer be taken into account) which may have arisen since the original appeal decision was issued;*
- *To comment on the specific issue(s) upon which the appeal was quashed”.*

1.4 In a subsequent email from Helen Skinner, the Planning Inspectorate confirmed an extension of time for these actions to 14th April 2024 and stated:

“Please note we only need any comments on the specific issue(s) upon which the appeal was quashed, and any updates to your Statement of Case at this stage. As long as all parties are happy to continue as an inquiry, there will be an opportunity to submit updated Proofs of Evidence before the new event.”

1.5 This revised Statement of Case sets out the Appellant’s position for the re-determination. In line with the requests from PINS, it provides comment as to the issue on which the original appeal decision was quashed and it draws attention to material changes of circumstances that have occurred since the first determination of the appeal. It is drafted in outline only, on the basis that there will be the opportunity to submit updated Proofs of Evidence before the new event.

1.6 At the time of writing the Appellant does not have the benefit of knowing the LPA’s updated position which it needs to address. Therefore, we reserve the right to add to our case to reflect the position that the LPA will adopt.

2. Background and Summary of Case

2.1 Refused Planning Application

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

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

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

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

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

2.3 However, despite the above recommendation, the decision notice issued by WCC on 27th May 2022 refused the application for the following reasons:

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

2.2 Planning Appeal and High Court Judgment

2.4 The Council’s Statement of Case identified that only reason 2 (Unacceptable impact on openness of the Green Belt) and reason 3 (Unacceptable impact on residential amenity and local schools) would be defended in the appeal. Prior to the opening of the Inquiry, a Statement of Common Ground (SoCG) was submitted and signed by both the Appellant and the Council on 24th January 2023. A revision to the SoCG was submitted and signed by both the Appellant and the Council on 15th February 2023 and superseded the January version. The revised SoCG identified that the Council had considered the additional technical evidence submitted by the Appellant under the Regulation 25 request of 13th January 2023 and that, as a consequence, the Council would not be defending reason for refusal 3 (Unacceptable impact on residential amenity and local schools) in the appeal. Consequently, the Council only defended reason 2 (Unacceptable impact on openness of the Green Belt) in the appeal.

2.5 Notwithstanding this, a local residents’ association, ‘Stop the Quarry’ participated in the appeal with ‘rule 6’ status at the Inquiry and argued that all of the 15 ‘key issues’ identified in the Council’s officer’s report

to Committee (listed at para 2.3 above) should have formed the basis of refusal. Stop the Quarry supported, with evidence, all nine of the Council's original reasons for refusal.

- 2.6 After a public inquiry lasting eight days, the Inspector set out his conclusions in his decision letter ("DL"). He concluded in favour of the development proposal in relation to amenity, living conditions and health (noise, dust, air quality), landscape and visual considerations, highways and public rights of way (DL 188 to 189).
- 2.7 He found that the Development would accord with, or not conflict with, all development plan policies save for MLP 27, WSC 13, DM.22, relating to Green Belt.
- 2.8 He gave full consideration to a number of issues that remained in dispute with the rule 6 party and he made the following key findings in his decision letter:
- no significant adverse effect on the amenity of the area or the living conditions and health of those living nearby or using recreational features, (DL119);
 - no significant adverse effect on the character or appearance of the site and surrounding landscape and no significant adverse effect on visual receptors (DL131);
 - overall the landscape restoration scheme will deliver landscape benefits which should be afforded moderate weight in the planning balance (DL129 to 130);
 - no severe residual cumulative impact on the road network and nothing more than a negligible increased risk to highway safety (DL149 – 150, 189);
 - minor impact on the views from users of the public right of way network, to be afforded limited weight in the planning balance (DL136 & 189);
 - perception of harm to the local economy, to be afforded limited weight;
 - less than substantial harm to the setting of a heritage asset; but benefits found to outweigh that harm (DL164 – 166);
 - the proposal would make a notable contribution to the supply of needed minerals, a matter of substantial significance that should be given great weight (DL50 and DL191);
 - the economic benefits of the proposed development, including the provision of a minimum of 11 full time jobs would make a modest contribution to the local economy, such benefits to be afforded moderate weight (DL192);
 - biodiversity net gain of nearly 4 times that required by forthcoming legislation. As some of that 'is required to meet national policy and future legislative requirements' in order to mitigate the environmental impact of the development, such enhancements should be afforded only moderate weight (DL195);

- the landscape benefits of the restoration scheme should be accorded moderate weight (DL129 – 130 & 194)
- the proposed additions to the public rights of way network would offer a benefit of minor significance, which should be given slight weight in the planning balance (DL137 & 194)
- the appeal site and its immediate environs will soon likely form the remaining area of Green Belt between settlements and so has spatial importance. The appeal site plays an extremely important Green Belt role (DL59 & 60).
- the proposal constitutes mineral extraction and engineering operations under paragraph 150 of the NPPF. The plant, equipment, buildings and access and activity associated with mineral extraction would, to some extent impair the openness of the area but this alone would not exceed the threshold or ‘tipping point’ of appropriate minerals development. However, the soil and overburden storage bunds would have a greater adverse impact on the openness of the Green Belt. Whilst the adverse effect of the bunds on openness would be fully reversible over time, their length, height and duration in such a contained open area, would, in combination with the extraction operations, result in the partitioning of the site and would have a substantial and visual adverse effect on the openness of the Green Belt. This means that the appeal scheme would not preserve the openness of the Green Belt and consequently the exception for mineral extraction in the Green Belt would not apply and the proposal would be inappropriate development which is by definition harmful.
- not possible to conclude with any degree of certainty whether or not there is a realistic possibility of the required 60,000m³ of inert fill per annum being sustained to ensure the deliverability of the phased working and restoration within 11 years of the commencement of the development. Any shortfall in achieving the required annual level of inert fill to achieve the phased working and restoration could result in the need to extend the duration of operations beyond the current envisaged 11 years. It is therefore not unreasonable to conclude that there is a risk that the harm to the openness of the Green Belt could extend beyond the indicated time period (DL199).

2.9 The Inspector’s decision to dismiss the appeal was based wholly on his consideration of whether or not there were very special circumstances to outweigh Green Belt harm and was ‘very finely balanced’ (DL200). Feeding into that very fine balance was the Inspector’s decision to accord ‘only moderate weight’ to the benefit of nearly 40% biodiversity net gain (“BNG”), on the basis that some of it ‘is required to meet national policy and future legislative requirements’. The High Court judgment quashed the Inspector’s decision on the ground that his reason for reducing the weight to the BNG was wrong in law:

“...when assessing the weight to be attributed to the biodiversity net gain for the purposes of assessing whether there were very special circumstances outweighing the harm to the openness of the Green Belt the Inspector reduced that weight on the basis of a mistaken view as to the law. He did so believing incorrectly that some of the net gain would be required in any event by reason of the forthcoming legislation. That was an error of law and meant that the Inspector exercised his planning judgement as to the weight to be given to that material consideration (namely the net gain) on a basis which was wrong in law.” (NRS Saredon Aggregates Ltd v. SSLUHC [2023] EWHC 2795 (Admin), at para 56).

2.3 Summary of The Appellant’s Case

- 2.10 It is the Appellant’s case that substantial or major weight should be accorded to the almost 40% biodiversity net gain that will be delivered by this proposal. This is on the basis that all of that BNG is a positive benefit that is neither required by policy or law (save for a policy requirement merely that the net gain should be more than zero). It is also on the basis that the BNG includes 8.1ha of lowland acidic grassland which is a Biodiversity Delivery Action Plan Priority Habitat and both a County Target Habitat (specifically supported by development plan policy) and also a National Target Habitat). The Appellant will elaborate on the correct approach to the weight to be accorded to the BNG in updated proofs of evidence.
- 2.11 The Appellant’s case remains that the proposal does not constitute inappropriate development in the Green Belt (contrary to the opinion of the previous Inspector) (whether considered as originally submitted, or with the proposed revised plant and bunds referred to in Appendices 1 and 2 and paragraphs 5.20 to 5.25 below). 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 155, and this proposal should benefit from those exemptions as it comes within the intended scope.
- 2.12 Notwithstanding this, even if the Inspector were to conclude, like the previous Inspector, that the proposal constitutes inappropriate development in the Green Belt, it is the Appellant’s case that, properly considered, the very special circumstances in favour of the proposal (including the BNG) clearly outweigh the harm by reason of any inappropriateness and any other harm, such that planning permission should be granted.
- 2.13 As such, for the detailed reasons set out below and to be expanded upon in updated proofs of evidence, it is the Appellant’s case that the proposed development should be determined in accordance with the initial recommendations of the planning officer for approval and this Appeal should be upheld.

3. The Appeal Proposal

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

A new agricultural parkland will be created designed to enhance local access, amenity and wellbeing with the provision of approximately 2.3km of new routes of public footpaths, cycleways, bridleways and pocket parks. Native woodland blocks will be re-established to reflect previous social historic land uses, hedges will be strengthened, and new acidic rich meadow grassland will be developed to promote biodiversity and educational opportunities.

- 3.9 To aid in this process c. 60,000 m³ of inert material will be imported onto site per annum, c. 600,000 m³ in total, to help create restoration formation levels onto which the original site soil profile will be placed. The Western Area of the site is proposed to be fully restored within 5 years of extraction commencing with the Eastern Area restoration being fully completed within one year after the cessation of mineral extraction.
- 3.10 Land Aftercare and Management agreements will be established to ensure the restoration/enhancement measures are financially sustainable and permanent.
- 3.11 Since the previous inquiry, there has been a material change in circumstances in that the Appellant is now able to access plant that is lower in height (by around 50%), lower in footprint (can be reduced from 2,752m² to 451m²) and lower in noise levels. Quarry plant and infrastructure has evolved over the course of the 5-6 years since the proposed development was first conceived. The attached plan at **Appendix 1** shows the proposed changes to the plant. Whilst this change does not affect the appeal proposal *per se*, it does enable a change to the mitigation, and particularly to the height and duration of the bunds. At **Appendix 2** to this revised Statement of Case is a plan showing the updated proposed temporary soil attenuation and mitigation bunds. The Appellant will provide updated Proofs of Evidence demonstrating how the change in plant specification can achieve this reduction in the height and duration of the bunds whilst ensuring no adverse landscape impacts, no adverse impacts in terms of noise or visual amenity and further reduced impact on openness.
- 3.12 The Appellant is conscious of the guidance which states that the appeal process should not be used as a means to evolve the scheme. However, there are exceptional circumstances to allow the proposed revisions in this case. First, there is to be a second appeal inquiry or hearing. This is due to the fact that, exceptionally, the appeal decision arising from the first inquiry was legally flawed and quashed by the High Court. This also means that significant time has elapsed since the scheme was conceived, such that circumstances have materially changed allowing for different and better plant and infrastructure to become available. Further, whilst the proposed revisions would alter the internal height, placement and duration of bunds, they would not fundamentally alter the proposed development so as to make it substantially different from that which is applied for and was previously consulted upon. In any event, due to the exceptional circumstances of the elapse of time and quashed first appeal decision, the new redetermination event allows for the opportunity for consultation (not least through the continued participation of the rule 6 party). Further, as a matter of good practice, the Appellant proposes to formally consult on the revisions in advance of the re-opened inquiry to ensure that there is opportunity for all concerned to comment as appropriate. The Appellant will ensure that the proposed changes to the bunds

are publicised appropriately (either with the co-operation of the local planning authority under NPPF para 38, or independently). Accordingly, in line with the relevant case law (*Holborn Studios* [2017] EWHC 2823 (Admin), *Wheatcroft* [1982] 43 P & CR 233 and *Bramley Solar* [2023] EWHC 2842 (Admin)) and in line with the procedural guidance, the Inspector is requested to confirm that the re-determination of the Appeal will be on the basis of this revised plant and mitigation bunds.

4. Planning Policy

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

Local Policy

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

4.3 The relevant statutory Development Plan for the appeal comprises:

- 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).

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

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

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

4.7 Policy MLP 3: ‘Strategic Location of Development – Areas of Search and Windfall Sites within the Strategic Corridors’ of the adopted Minerals Local Plan (July 2022) states that: *“a) planning permission will be*

granted for new mineral developments and extensions to extant sites within allocated areas of search where there is a shortfall in supply as demonstrated by Part c)”.

4.8 Part c) of the policy states: *“a shortfall in supply for a broad mineral type will be considered to exist where: i) there is a shortfall in extant sites and allocated specific sites and / or preferred areas to meet the scale of provision required over the life of the plan...”*

4.9 The Appellant notes that the site is located within a strategic corridor and within an area of search as set out in the adopted Minerals Local Plan (July 2022).

4.10 Other policies of relevance to the appeal are:

- The Worcestershire Minerals Local Plan (adopted July 2022):
 - Policy MLP 7: Green Infrastructure;
 - Policy MLP 11: North West Worcestershire Strategic Corridor;
 - Policy MLP 14: Scale of Sand and Gravel Provision;
 - Policy MLP 15: Delivering Steady and Adequate Supply of Sand and Gravel;
 - Policy MLP 26: Efficient Use of Resources;
 - Policy MLP 27: Green Belt;
 - Policy MLP 28: Amenity;
 - Policy MLP 29: Air Quality;
 - Policy MLP 30: Access and Recreation;
 - Policy MLP 31: Biodiversity;
 - Policy MLP 32: Historic Environment;
 - Policy MLP 33: Landscape;
 - Policy MLP 34: Soils;
 - Policy MLP 35: Best and Most Versatile Agricultural Land;
 - Policy MLP 36: Geodiversity;
 - Policy MLP 37: Water Quality and Quantity;
 - Policy MLP 38: Flooding;
 - Policy MLP 39: Transport; and
 - Policy MLP 40: Planning Obligations.
- The Worcestershire Waste Core Strategy Development Plan Document 2012 – 2027 (Adopted November 2012):

- Policy WCS 1: Presumption in favour of sustainable development;
 - Policy WCS 2: Enabling Waste Management Capacity;
 - Policy WCS 5: Landfill and disposal;
 - Policy WCS 6: Compatible land uses;
 - Policy WCS 8: Site infrastructure and access;
 - Policy WCS 9: Environmental assets;
 - Policy WCS 10: Flood risk and water resources;
 - Policy WCS 11: Sustainable design and operation of facilities;
 - Policy WCS 12: Local characteristics;
 - Policy WCS 13: Green Belt;
 - Policy WCS 14: Amenity; and
 - Policy WCS 15: Social and economic benefits.
- Wyre Forest District Local Plan 2016 – 2036 (Adopted April 2022):
 - Policy SP.2 - Locating New Development;
 - Policy SP.7 - Strategic Green Belt Review;
 - Policy SP.16 - Health and Wellbeing;
 - Policy SP.21 - Historic Environment;
 - Policy SP.22 - Landscape Character;
 - Policy SP.23 - Protecting and Enhancing Biodiversity;
 - Policy SP.24 - Protecting and Enhancing Geodiversity;
 - Policy SP.27 - Transport and Accessibility in Wyre Forest;
 - Policy SP.29 - Water Conservation and Efficiency;
 - Policy SP.30 - Sewerage Systems and Water Quality;
 - Policy SP.31 - Flood Risk Management;
 - Policy SP.32 - Sustainable Drainage Systems (SuDS);
 - Policy SP.33 - Pollution and Land Instability;
 - Policy SP.34 - Minerals;
 - Policy SP.35 - Waste;

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

Other Material Considerations

Worcestershire Local Aggregates Assessment: Data covering the period up to 31/12/2022

- 4.11 The appellant will demonstrate that the Council cannot demonstrate a 7 year landbank as required by the NPPF. The Appellant will provide evidence to demonstrate that the Council is unable to rely on the site at Sandy Lane Quarry as part of its landbank. This is because test information indicates that the sand is so fine that it is unsuitable for any mortar or sand and gravel mix. It is also understood that the site is not being run at the moment and is likely to just be used for receiving inner material for restoration purposes.
- 4.12 Furthermore, it is considered that the Appeal Proposal would contribute to providing a balanced geographical spread of mineral reserves and provide an additional mineral site, contributing to a steady and adequate supply of mineral (sand and gravel) and adding to resilience to the mineral (sand and gravel) supply in Worcestershire, which is currently provided by a limited number of active sites.

Importation of Inert Waste for Restoration

- 4.13 The Appellant will provide evidence to demonstrate that, since the last inquiry, there is new information, including the waste returns for Saredon Quarry (Staffordshire) and Meriden Quarry (Solihull), which will show that the Inspector can have confidence that the Appellant will be able to obtain sufficient imported materials to restore the site in accordance with the proposed timescale.

National Planning Policy Framework (NPPF)

- 4.14 Since the previous inquiry, the NPPF has been replaced with revised versions (the latest dated 20 December 2023). However, there are no material changes of relevance to the appeal, but some paragraph references have changed and have been updated below. The Appellant will demonstrate that, having regard to the proper application of the Framework, the Appeal Proposal meets the three overarching objectives of sustainable development under paragraph 8 and benefits from the presumption in favour of sustainable development under paragraph 11 of the Framework.
- 4.15 Section 13 of the NPPF states that *"the Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence"* (Paragraph 143). Paragraph 138 of the NPPF states that *"Green Belt serves five purposes:*

- a) to check the unrestricted sprawl of large built-up areas;*

- b) *to prevent neighbouring towns merging into one another;*
- c) *to assist in safeguarding the countryside from encroachment;*
- d) *to preserve the setting and special character of historic towns; and*
- e) *to assist in urban regeneration, by encouraging the recycling of derelict and other urban land".*
- 4.16 Paragraph 152 of the NPPF states in respect of proposals affecting the Green Belt that *"inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances"*. Paragraph 153 of the NPPF states *"when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations"*.
- 4.17 Minerals can only be worked where they are found, and mineral working is a temporary use of land. Paragraph 155 of the NPPF identifies certain forms of development as not inappropriate development within the Green Belt, this includes mineral extraction and engineering operations, *"provided they preserve its openness and do not conflict with the purposes of including land within it"*.
- 4.18 The appellant remains satisfied that the proposals preserve openness (and this is even more the case with the revised mitigation bunds) and do not conflict with the purposes of including land within the Green Belt. However, the appellant will demonstrate that given the clear need and sustainable benefits of developing a sand and gravel quarry within this location, the associated benefits to the local economy and the biodiversity and restoration benefits of the proposal, very special circumstances exist that justify the development of a quarry in this location.
- 4.19 Paragraph 215 of the NPPF re-states the long established concept that minerals *"can only be worked where they are found"*. Paragraph 217, sets out that *"when determining planning applications, great weight should be given to the benefits of mineral extraction, including to the economy"*. Paragraph 219 adds that minerals planning authorities should plan for a steady and adequate supply of aggregates by inter alia maintaining sufficient reserves (landbank) of at least 7 years for sand and gravel, whilst ensuring that any aggregate materials of a specific type or quality which have a distinct and separate market are not compromised.
- National Planning Practice Guidance (PPG)*
- 4.20 The Appellant will refer to relevant elements of the PPG as required within evidence. In particular, paragraph 001 will be explored, which sets out that minerals *"make an essential contribution to the country's prosperity and quality of life"* and that:
- *"minerals can only be worked (ie extracted) where they naturally occur, so location options for the economically viable and environmentally acceptable extraction of minerals may be limited.."*

- *working is a temporary use of land...*
- *working may have adverse and positive environmental effects, but some adverse effects can be effectively mitigated; and*
- *following working, land should be restored to make it suitable for beneficial after-use”.*

4.21 The Appellant may refer to other planning applications, appeal decisions and case law where relevant to the Appeal Proposal. These will be agreed with the Council and copies will be provided as Core Documents (where not already included).

5. The Appellant's Case

5.1 Introduction

- 5.1 As set out in Section 2 of this Statement, the Council only defended reason 2 (Unacceptable impact on openness of the Green Belt) in the previous appeal and the Appellant can see no reasoning or justification of why this should not be the same approach for this re-determined appeal.
- 5.2 This section of the Statement of Case sets out the Appellant's case and covers material changes in circumstances which we think should be taken into account.

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

- 5.3 The Appellant strongly disagrees with the Appeal Decision's contention that the proposal would be inappropriate development in the Green Belt.
- 5.4 The Appellant accepts that great importance is attached to the Green Belt, noting the fundamental aim is to prevent urban sprawl by keeping land permanently open. It is also accepted that inappropriate development is, by definition harmful to the Green Belt and should not be approved except in very special circumstances, where the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. Notwithstanding this, the NPPF does indicate that both mineral extraction and engineering operations are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.
- 5.5 The proposed development would, notwithstanding its duration, be a temporary activity and whilst the proposal would disturb the site for a period of time, the site would only progressively be disturbed and it would be progressively restored to an open state following completion of extraction and would be no more built up on completion of the development as a result of the proposal as it is now. Whilst the proposal would be visible, it would not be very visible due to the topography, proposed temporary soil storage / visual screening bunds, existing historic boundary walls and proposed planting, with any views being contained to relatively few receptors. It is considered that the visual impact on openness does not make this development "inappropriate".
- 5.6 It is considered that the proposal is in line with any typical mineral development in the Green Belt, and it is considered that this site should benefit from the exceptions that are clearly provided for in the NPPF for mineral sites. There would be impacts, but only of a temporary duration, and relatively short for mineral extraction, with an appropriate restoration programme, back to a beneficial status in the Green Belt. The NPPF clearly envisages that mineral extraction should benefit from the exemption in paragraph 150, and this proposal should benefit from those exemptions as it comes within the intended scope.
- 5.7 The assessment of WCC's Planning Team set out in the Committee Report is that this is a proposal that would preserve the openness of the Green Belt and not conflict with the purposes of Green Belt. NPPF

paragraph 155 is written on the premise that mineral extraction is an appropriate use in the Green Belt, and there is nothing unusual about this proposed quarry operation that is different from any other such use that it should be considered to have an unacceptable impact on openness.

Proposed Amendments to the Plant and Mitigation Bunds

- 5.8 The proposition that the proposal (including mitigation) will not have an unacceptable impact on openness holds true even more so now in light of the material change in circumstances as to the availability of reduced size plant. As set out in section 2 above, quarry plant and infrastructure has evolved over the course of the 5-6 years since the proposed development was first conceived. The Appellant now proposes a much smaller (6m high), more energy efficient, sustainable and quieter plant (see attached Plan showing the original plant and the new plant now proposed – **Appendix 1**). The processing plant as originally proposed is to be located a minimum of 7m below adjacent ground levels and contained, therefore, this new plant would not require the same level of bund placement.
- 5.9 The Appellant has ascertained that the impact of the plant and the height, nature and duration of the bunds can now be significantly reduced as set out on the plan attached at **Appendix 2**.
- 5.10 Landscape and Visual and Noise evidence will be presented to the inquiry by Expert Witnesses addressing the proposed revisions. The planning evidence will also be updated to explain the consequences in Green Belt terms.

5.3 Very Special Circumstances

- 5.11 It is the Appellant's firm view that the Appeal Proposal is not inappropriate development in the Green Belt. Notwithstanding this, if it is found that any part of the Appeal Scheme is considered inappropriate development in the Green Belt, the Appellant will demonstrate that very special circumstances exist to overcome the 'great weight' attached to protecting Green Belts. It is the Appellant's case that very special circumstances exist from the following.

The need for the development

- 5.12 The need for the release of new mineral reserves to ensure a "*steady and adequate supply of aggregates*" and the great weight that is attached to mineral extraction.
- 5.13 There is an urgent need for the release of mineral reserves in Worcestershire. The Appeal Scheme would be a major contributor to the Council's landbank. It is noted that the Council now claim a 7.59 year landbank, which is a somewhat dramatic increase since the last inquiry (SoCG 15th February 2023 – 5.74 years) and has come about without the Council approving any mineral applications. In any case, the landbank is now a year old as it is based on data covering the period up to 31/12/2022 and since there has been no further mineral applications approved, the landbank sits at the 31/03/2023 at 6.4 years. The Appellant will further inspect the landbank in evidence and, as stated in para 4.11 above, will provide recent evidence as to the fact that the Council is wrong to include Sandy Lane Quarry in the landbank.

- 5.14 Further to the above, the nature of the geology of the quarry with a variety of sand and gravel and solid sand, offers a wide product range for construction including building sand, concrete, mortar and drainage material from a sustainable location for supplying the site.

Sustainability Benefits

- 5.15 The proposed site has a unique logistical position in the marketplace, as Worcestershire has a clear divide in available resource. The northern half of the County in which the Appeal Site is located contains the solid sands (building and mortar markets) with the concreting sand and gravels from the terrace and glacial deposits in the south of the county. The two different resources serve different and distinct markets. Their location within the county would affect the distance they need to travel to market as well as the demand / pull on resources from outside the county to meet demand. The number of active and permitted sites (but non-operational) sites are also small in number which may affect the distance the reserves travel to market.
- 5.16 When looking at the supply of mineral within a county, a balanced spread of geographical location supply sources is very important in promoting sustainable development. Aggregates being bulky in nature, costly to transport / typically only transported about 30 miles from source. The closest county sand and gravel quarry to Kidderminster is Clifton Quarry, located circa. 24 miles away. The Appeal Proposal would help provide a balanced geographical spread of mineral supply sources.
- 5.17 A further key consideration is the number of proposed and permitted large-scale residential schemes in close proximity to the Appeal Site. Large quantities of inert waste would arise from these large-scale schemes and the potential transport to and use of this material in the restoration scheme, aligns with the ethos of achieving sustainable development.

Development, Growth and Economic Benefits

- 5.18 The Appeal decision recognised the contribution of 11 full-time employees at the quarry along with briefly touching upon “some secondary or multiplier economic effects”, however, **considered that** “the likely effect on the economy would be a benefit of minor significance” and “*awarded moderate weight*”.
- 5.19 The NPPF (para. 81) is unambiguous that the planning system should support sustainable economic growth and that this should attract significant weight in planning decisions. The Appellant will set out further detail on how the Appeal Scheme would not only help provide jobs for people directly and indirectly employed as part of the quarry operations but also to the economy through aggregates levy [a tax on sand, gravel and rock] and other taxation processes.

Restoration and Biodiversity Benefits

- 5.20 The Appellant will demonstrate that the benefits resulting from this proposed development are substantial and wide reaching, with a significant net gain in biodiversity. As part of the Appeal and submitted to the previous Inquiry, an assessment of biodiversity impacts was undertaken, which demonstrated the proposed scheme will deliver a likely substantial net gain for biodiversity of **+39.31% BU** for habitats, and

+107.51% HU for hedgerows.

- 5.21 This significant net gain is due to areas of low distinctiveness arable land, improved grassland, scrub and tall ruderal vegetation being replaced by high distinctiveness acid grassland, woodland, parkland, waterbodies and the plating of scattered trees. Existing Ecological functionality will be maintained at the site via the retention of the hedgerow and woodland networks and further enhanced through new hedgerow planting and the creation of additional woodland areas and scattered trees.
- 5.22 As discussed previously, Mr Justice Eyre's Court decision ruled that the inspector had made an "error in law" by reducing his assessment of the weight that should be attached to the scheme's proposed level of biodiversity net gain on the basis of a misunderstanding as to the legal and policy requirements that apply.
- 5.23 The legal requirement to provide 10% biodiversity net gain does not, and did not, apply to this scheme. Further, there is no policy requirement for any specified level of biodiversity net gain. Policy MLP 31: Biodiversity of the Worcestershire Minerals Local Plan merely sets out that planning permission will be granted where it is demonstrated that the proposed mineral development will conserve, enhance and deliver net gains for biodiversity.
- 5.24 The proposed restoration scheme for the site will deliver ~ 8.1 Ha of Lowland Acidic Grassland which is a Biodiversity Delivery Action Plan Priority Habitat and is not only a County Target Habitat but also a National Target Habitat. As was described within the submitted scheme. the location of the site and its restoration land uses provide increased ease of access into the countryside for local communities, promoting educational, health and recreational opportunities and will help to deliver Green Infrastructure within the county.
- 5.25 As set out in section 2 above, the Appellant will contend that full weight should be afforded to all the net gain that is to be provided, given that it is a benefit that is not a requirement of policy or legislation. The Appellant will contend that the restoration and biodiversity benefits of the scheme should be accorded substantial or major weight in the planning balance and this will be supported by updated expert evidence at the Inquiry.

6. Other Matters

6.1 The effect of the proposed development on local amenity and the 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 along with whether the effects of the proposed development on the character and appearance of the area, outlook from nearby properties, highway safety and the efficient operation of the highway network, Public Rights of Way and heritage assets were discussed in detail at the previous Inquiry.

6.2 The Appellant provided evidence and expert witnesses to address these matters and at paragraphs 188 and 189 of the Appeal decision, the Inspector stated the following:

“188. I have found that, subject to appropriate planning conditions, the proposed development would not, by reason of noise, dust or poor air quality, have a significant adverse effect on the amenity of the area or the living conditions and health of those living nearby or using recreational features. In addition, I do not consider that it would have a significant adverse effect on the character or appearance of the site and the surrounding landscape of an extent to sustain the dismissal of this appeal on those grounds, nor would any visual receptor receive a significant adverse effect during the proposed development of an extent that would be materially detrimental to living conditions.

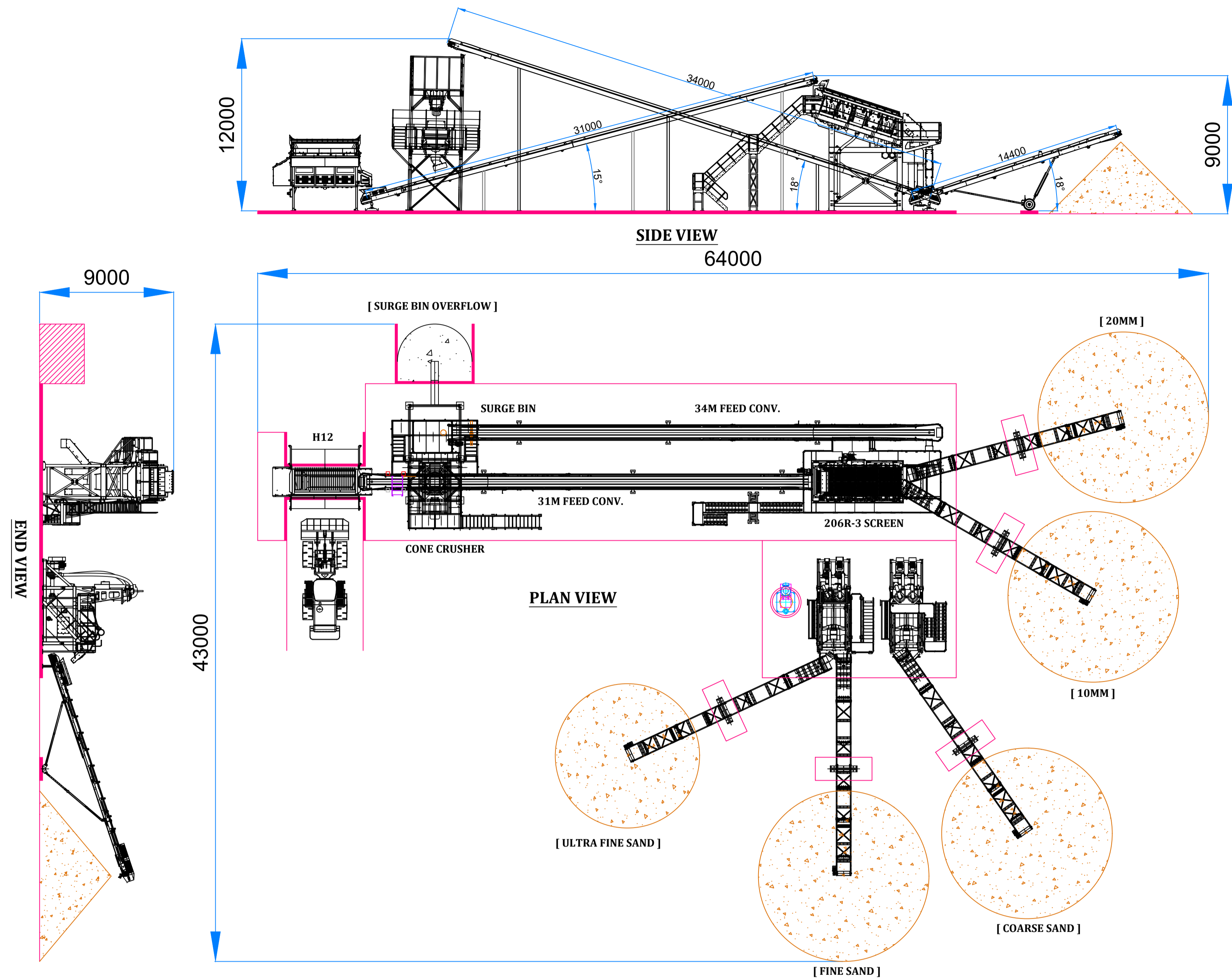
189. I do not consider that the proposed development would cause a severe residual cumulative impact on the road network. Any increased risk to highway safety would be negligible, and so should not weigh in the planning balance. There would be no loss of accessibility to the PRow network for the duration of the operations but there would be a loss of some open views that users would experience. However, I consider this, in planning terms, to be of minor significance but should be afforded limited weight”.

6.3 The Appellant agrees with the above findings and considers that these matters have been sufficiently addressed and do not need to be re-opened as part of the re-determined appeal, save in relation to the impact of the revised plant and mitigation bunds on noise, landscape and visual considerations. The Appellant proposes to provide expert noise, landscape and visual evidence in terms of the proposed revisions to the mitigation bunds.

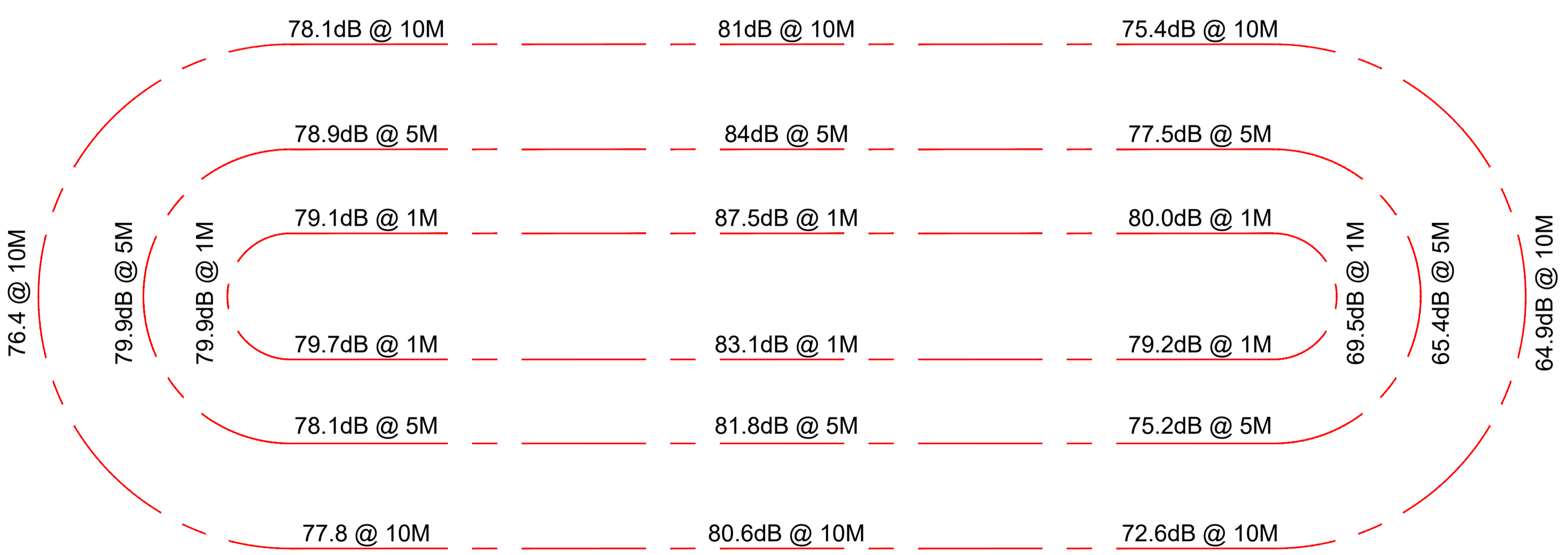
7. Proposed Draft Planning Conditions

- 7.1 Should the Appeal be upheld, the Appellant would be prepared to accept all the Schedule of Conditions agreed at the previous Inquiry (**CD13.26** - 30.01.2023).
- 7.2 The Appellant considers these conditions to be reasonable and relevant to the proposed development and sufficient to ameliorate environmental and amenity effects so that they do not have “unacceptable” impacts.

Appendix 1 - Plan showing the original plant and the new plant now proposed



Length - 64m
 Width - 43m
 Height - 12m



Noise Level



PowerX Equipment
 Site 7 Meriden Park
 Cornets End Lane
 Meriden
 CV7 7LG
 T: 02476 405 100
 www.pxequip.com

Revisions		Date	Drawn by	Checked by
A	First Issue	---	T. Onisha	
Rev	Notes			

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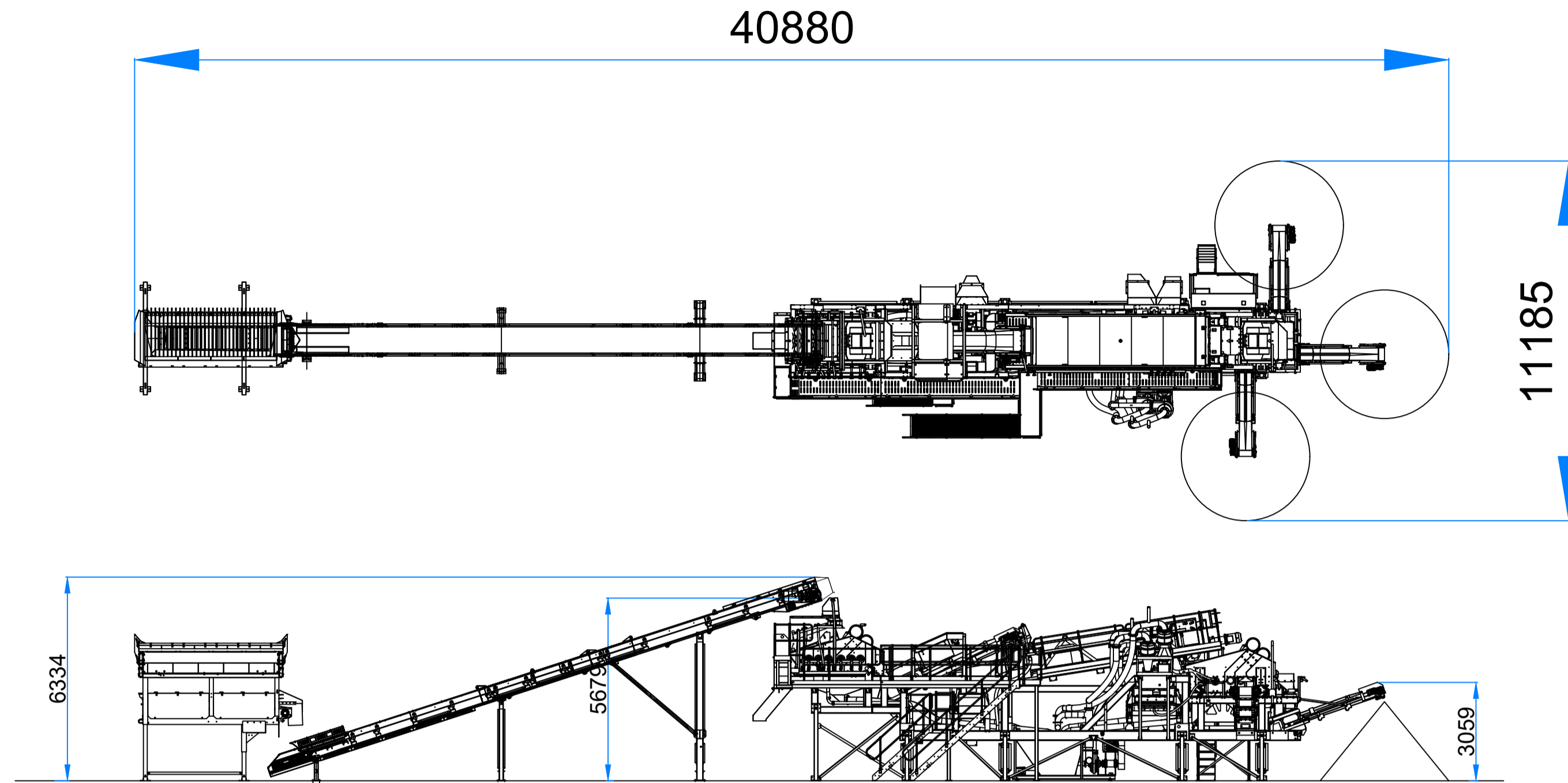
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Revision: A

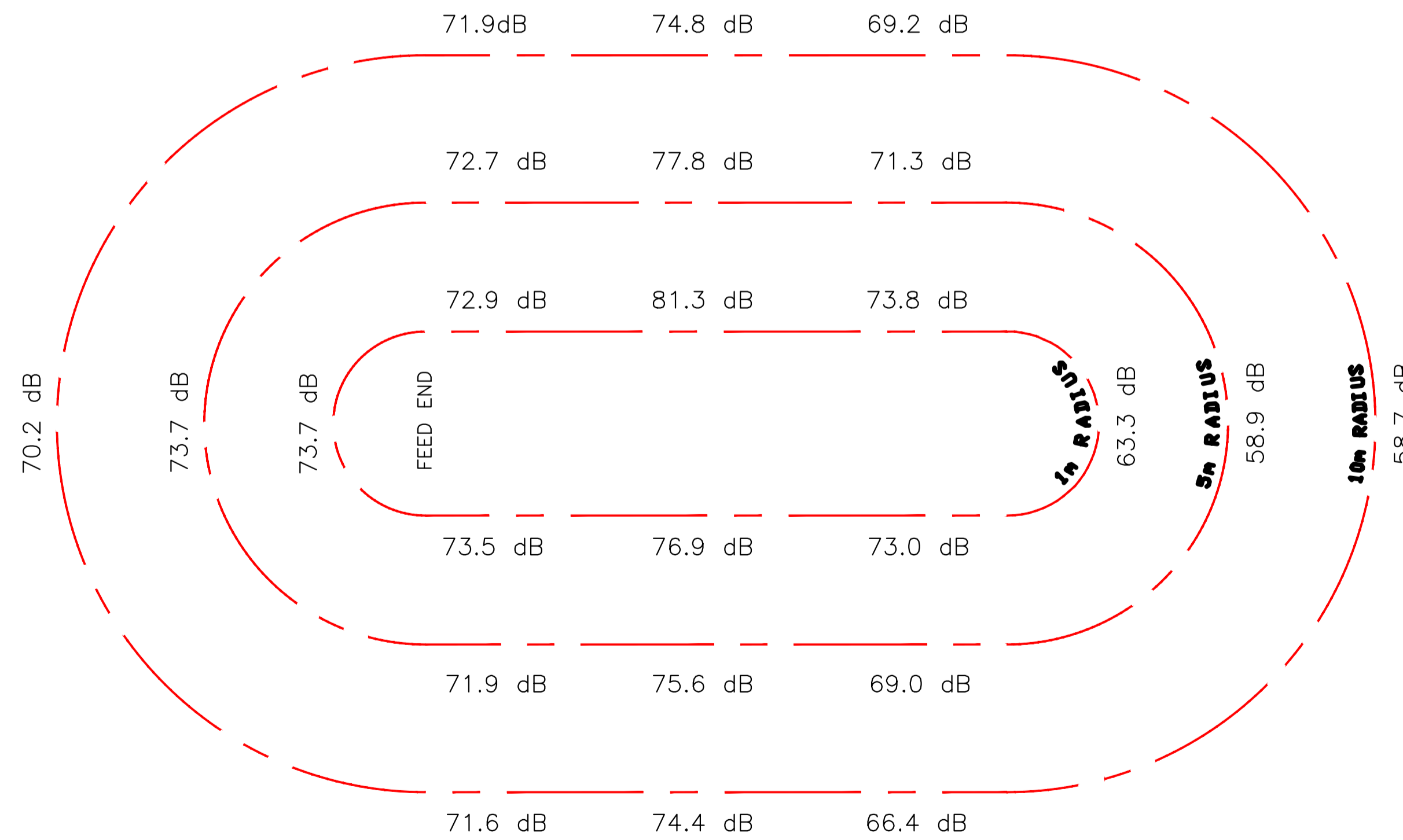
Site Ref:	LEA CASTLE FARM	Scale:	N.T.S.
Customer:	NRS	Sheet No.:	1/1
Drawing No.:	E2370-SGA-001	Description:	Original Plant Proposal
		ALL LEADING DIMENSIONS IN METRIC (mm). TRAILING DIMENSIONS IN IMPERIAL (ft, inch) UNLESS OTHERWISE STATED.	

PLEASE NOTE THAT THIS IS A PRE-SALES DRAWING AND SHOULD BE USED FOR DISCUSSION / QUOTATION PURPOSES ONLY

Length - 41m
 Width - 11m
 Height - 6m



Noise Level



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 Meriden
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Revisions		Date	Drawn by	Checked by
A	First Issue	---	T.Onisha	
Rev	Notes	Date	Drawn by	Checked by

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 Notes: --
 Revision: A

Site Ref: LEA CASTLE FARM	Scale: N.T.S.
Customer: NRS	Sheet No: 1/1
Drawing No: E2370-SGA-002	Description: Revised Plant Layout
Sheet Size: A4	

PLEASE NOTE THAT THIS IS A PRE-SALES DRAWING AND SHOULD BE USED FOR DISCUSSION / QUOTATION PURPOSES ONLY

ALL LEADING DIMENSIONS IN METRIC (mm). TRAILING DIMENSIONS IN IMPERIAL (ft, inch) UNLESS OTHERWISE STATED.

Appendix 2 – Plan showing the revised bunds

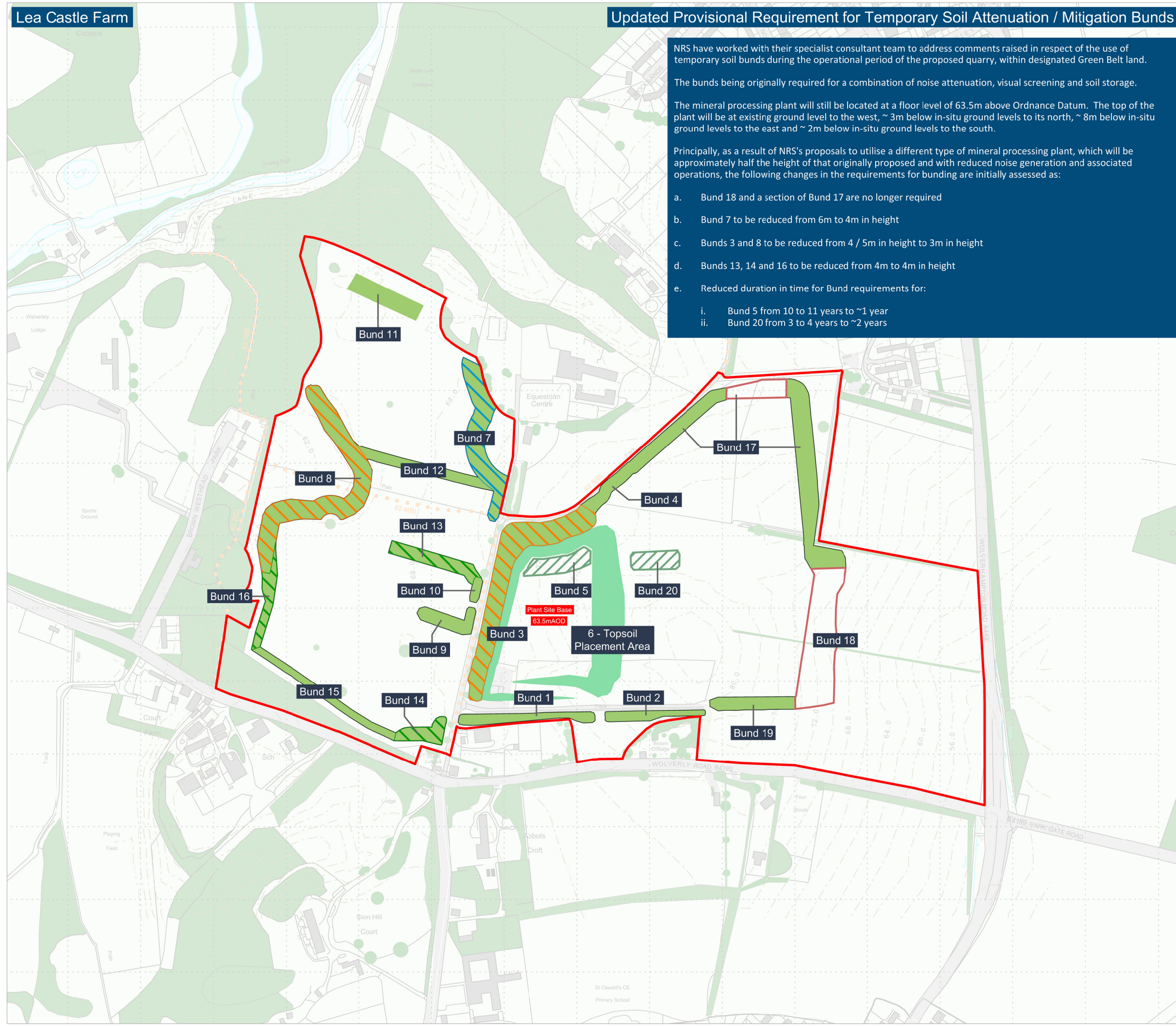
NRS have worked with their specialist consultant team to address comments raised in respect of the use of temporary soil bunds during the operational period of the proposed quarry, within designated Green Belt land.

The bunds being originally required for a combination of noise attenuation, visual screening and soil storage.

The mineral processing plant will still be located at a floor level of 63.5m above Ordnance Datum. The top of the plant will be at existing ground level to the west, ~ 3m below in-situ ground levels to its north, ~ 8m below in-situ ground levels to the east and ~ 2m below in-situ ground levels to the south.

Principally, as a result of NRS's proposals to utilise a different type of mineral processing plant, which will be approximately half the height of that originally proposed and with reduced noise generation and associated operations, the following changes in the requirements for bunding are initially assessed as:

- Bund 18 and a section of Bund 17 are no longer required
- Bund 7 to be reduced from 6m to 4m in height
- Bunds 3 and 8 to be reduced from 4 / 5m in height to 3m in height
- Bunds 13, 14 and 16 to be reduced from 4m to 4m in height
- Reduced duration in time for Bund requirements for:
 - Bund 5 from 10 to 11 years to ~1 year
 - Bund 20 from 3 to 4 years to ~2 years



LEGEND

- Application Boundary
- New Mineral Processing Plant (6m lower in height and 6 decibels lower than the original proposed plant)
- No requirement for soil bunds for noise attenuation
- Bund 7 reduced from 6m to 4m in height
- Bunds 3 and 8 reduced from 4/5m to 3m in height
- Bunds 13, 14 and 16 reduced from 4m to 3m in height
- Reduced duration in time for bunds
Bund 5 from ~10 to 11 years to ~1 year
Bund 20 from ~3 to 4 years to ~2 years
- Temporary Bunds 1, 2, 4, 9, 10, 11, 12, 15 and 17 to remain at 3m in height
- Topsoil Placement Area to inner Plant Site
Batter Slopes - to be grass seeded

Please note that the soil bunds as illustrated opposite will NOT all be required at any one point in time.

Updated Phased Working and Restoration plans will be provided to illustrate detailed soil stripping, mitigation use within bunds and placement for restoration.



LIAM TOLAND PLANNING

PROJECT:
Lea Castle Farm

TITLE:
Updated Provisional Requirement for Temporary Soil Attenuation / Mitigation Bunds

REF NO:
LTP.LCF.INQ.2.D.001

DATE: April 2024 SCALE: 1:5,000 @ A3

STATUS:
DRAFT

