

WORCESTERSHIRE COUNTY COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78 APPEAL

Appeal by NRS Aggregates Ltd against the refusal of planning permission by Worcestershire County Council of “Proposed sand and gravel quarry with progressive restoration using site derived and imported inert material to agricultural parkland, public access and nature enhancement” on land at Lea Castle Farm, Wolverley Road, Broadwaters, Kidderminster, Worcestershire.

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

Application Reference: 19/000053/CM

OPENING SUBMISSIONS ON BEHALF OF

WORCESTERSHIRE COUNTY COUNCIL

This is an appeal against the decision by Worcestershire County Council (“WCC” or “The Council”) to refuse consent for application 19/000053/CM on 27th May 2022. The history of the matter, including the High Court challenge to the decision of Inspector Normington, which sees the appeal back at Inquiry now, is well known to all involved.

The appeal site is located within the Green Belt and comprises approximately 46 hectares of predominantly agricultural land. It is very proximate to the villages of Wolverley, Fairfield and Cookley. The location of the site is critical to its role within the Green Belt, and the Council’s reason for refusal.

WCC’s Statement of Case continues to maintain that WCC defends only one reason for refusal (original RfR 2). The various Statements of Common Ground set out the areas of agreement between WCC and the Appellant, leaving one narrow but critically important issue. This is summarised in the Inspector’s Main Issues as:

“(1) The effects of the proposed development on the openness of the Green Belt and upon the purposes of including land within it, and whether the development conflicts with policy to protect the Green Belt.”

Policy DM.22 of the Local Plan provides that development in the Green Belt will not be permitted, except in very special circumstances, or unless the development accords with one of a list of developments defined as a) to g):

g): “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”.

The Worcestershire Minerals Local Plan, Policy MLP 27 (Green Belt) identifies that mineral extraction and/or engineering operations within the Green Belt will be supported where it can be demonstrated 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, (subject to very special circumstances).

Waste Core Strategy for Worcestershire 2012 – 2027 Policy WCS 13 (Green Belt) states that waste management facilities will be permitted in areas designated as Green Belt where the proposal does not constitute inappropriate development, or where very special circumstances exist.

These development plan policies are up to date and full weight can be afforded to them. They accord with one another and mirror the Green Belt policies in the NPPF. The NPPF Green Belt principles are very well known. Certain forms of development are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. “Openness” has been defined by the caselaw, as analysed carefully within the Parties’ evidence, and includes a spatial and a visual element. The relative importance of the elements is a matter for the decision maker.

NPPF Paragraph 150 sets out those forms of development that are “not inappropriate”, and these can include, at part a) mineral extraction and at part b) engineering operations, (such as formation of screen bunds). Minerals developments are not, however, thereby

automatically allowable in the Green Belt, as further consideration must be given to the impact on openness, and the preservation thereof.

The Council's case is that the development proposal does harm the openness of the Green belt and conflicts with the Green Belt purposes, and that it is therefore inappropriate development. The Council concludes also that the harm by reason of inappropriateness is not clearly outweighed by other considerations and so there are no very special circumstances to justify the development.

The whole of the appeal site is within the Green Belt and within the villages of Cookley and parts of Wolverley. The policies map also shows the Lea Castle strategic allocation site, located approximately 20 metres east of the appeal site boundary and approximately 250 metres from the easternmost extent of the proposed extraction area. The allocation is for approximately 1,400 dwellings, employment land, primary school and community facilities. Outline planning permission (RefNo. 17/0205/OUTL) has been granted for 600 dwellings, Class B1 employment uses and other uses on the Lea Castle Village site. This is very important context for the contribution that the appeal site makes to the openness of the Green Belt, and the cumulative impact, given that the site and its immediate environs are soon to be surrounded on all sides by built development, which is an issue that the Appellant has failed to deal with adequately or at all.

The Council's witness, Mr Chris Whitehouse on behalf of the Council sets out the full analysis of all the relevant development plan policies and the reasons why this proposal conflicts. Mr Whitehouse has assessed both the application as originally made, and, prospectively, as potentially amended for the purposes of this appeal.

The Appellant places undue weight on paragraph 155 of the NPPF which indicates that certain types of development including mineral extraction sites may not be "inappropriate" in the Green Belt. The Development Plan policies largely echo the NPPF approach, and are in accordance with the NPPF. The Appellant ignores the proviso to this exemption, which is that the development must preserve the openness of the Green Belt and not conflict with any of its purposes. The Appellant makes much of this site as being a "typical" minerals site, but there is really no such thing. Every site is unique. This proposal crosses the "tipping point" relative to this particular location beyond which paragraph 155 no longer supports it, and the harm to the Green Belt is decisive. That is

exactly what Inspector Normington found, and the Appellant really does not deal with this at all.

The Appellant places emphasis on the Officers' Report that went to Committee in relation to application 19/000053/CM, but places no weight and gives no rebuttal to the conclusions of Inspector Normington. He said [DL 60]: "This spatial position, and the contained nature of the appeal site, emphasises its importance in fulfilling Green Belt purposes. Consequently, I consider that this site plays an extremely important Green Belt function in this location to which I have attached considerable weight."

This Inquiry is entitled to disagree if there is reason, but the Council maintains that it was a sound conclusion. The Appellant has not dealt robustly with this point, and instead makes a case based upon this site and this proposal being "typical", and just like all other mineral sites in any other location, which is obviously wrong. Not only do these alternative proposals fail to preserve the openness of the site, they would both do unacceptable harm to a very sensitive site within the Green Belt that is now performing a critical role, given its relationship with the surrounding development; existing and proposed.

The Appellant also faces a conundrum of their own making, in that the proposal will be judged on whether it causes the least possible impact on the Green Belt. That cannot rationally be said of the original proposal in light of the tabling of the alternative reduced proposal. The only reason to propose the alternative is to deal with the acknowledged impacts of the original, which are clearly, therefore, capable of further mitigation. Whether the Inquiry accepts the reduced proposal scheme or not, that conundrum is now firmly on the table to be considered.

The Council does maintain its position that the proposals both do unacceptable harm to the openness of the Green Belt, and also to two of the purposes of including land within the Green Belt, namely checking the unrestricted sprawl of built up areas, and safeguarding the countryside from encroachment. With respect to those two purposes, the cumulative impact of this proposal together with the significant consented development on neighbouring sites must be considered together.

It is accepted that WCC currently does not hold a sufficient landbank of minimum seven years as required by paragraph 213 of the NPPF, and Development Plan policy. The picture has improved, however, from the last Inquiry. The Council has a current landbank of approximately 6.59 years. The proposed scheme would add 4.5 years, taking the provision notably above the requirements of policy MLP14.

The Council echoes Inspector Normington in ascribing significant weight to the need for minerals supply. In addition, the Council ascribes moderate weight to the sustainability of the appeal site; the creation of jobs and biodiversity net gain. The Council does not ascribe weight to the potential for the site to obtain inert waste from adjacent sites.

There are no planning benefits, separately or cumulatively that could be given sufficient weight to amount to very special circumstances that would outweigh the harm to the Green Belt.

The Appellant's case is heavily dependent upon the temporary duration of the operational phases of the proposal, and the mitigation measures. Mr Whitehouse's evidence clearly demonstrates that, even for this space of time, the operational phase over eleven years both in isolation and cumulatively has an impact on the landscape and causes harm to the openness of the Green Belt. The bunds, internal haul roads, plant areas and associated activity are all significant developments that affect openness. There would also be very significant lorry activity within a current provision of countryside land, together with an intensified access junction and associated highway movements. The Appellant has largely ignored the impact of all of these factors, in conjunction with the large bunds. The impacts of the site and the bunds will remain throughout the whole eleven year lifetime of the site; contrary to the impression that the Appellant's evidence seeks to create. The bunds are designed precisely to "block" views of the development, which has an undeniable impact on openness. The bunds have a particular and significant impact on the public rights of way, that will be felt for a long time.

The Council's case appropriately and correctly analysed the impact of this proposal upon the Green Belt the first time around, and Inspector Normington agreed. The Council is right to defend reason for refusal 2, which is sufficient, in and of itself to justify a refusal of this appeal.

Sarah Clover

Kings Chambers

4 November 2024