

## **Appeal Ref: APP/E1855/W/22/3310099 - Lea Castle Farm Quarry Appeal**

### **Presentation to the Public Enquiry by Katherine Evans on behalf of the Residents of Hurcott Village with particular reference to the likely effect of the proposed quarry on the Hurcott Woods SSSI and other nearby SSSIs**

#### **1. Documents referred to in this presentation**

Kedd Limited Scoping Report dated April 2018  
Worcestershire County Council Scoping Opinion dated 29<sup>th</sup> June 2018  
Hurcott Village Objection to the Quarry dated 29<sup>th</sup> April 2019  
NRS Aggregates Borehole Log Study dated 21<sup>st</sup> October 2019  
Lea Castle Water Survey dated 21<sup>st</sup> October 2019  
Air Pollution Services Air Quality Review dated 4<sup>th</sup> March 2020  
Councillor Shirley Webb's email re water table dated 1<sup>st</sup> October 2021

#### **2. Introduction on the New Environment Act 2021**

2.1 I would like to start by referring the Enquiry to the new Environment Act 2021, which received Royal Assent on 9<sup>th</sup> November 2021, some six months before the original decision of Worcestershire Planning Authority to refuse the original application by NRS Aggregates. It identifies four priority areas:

- Biodiversity
- Air quality
- Water quality
- Waste management

2.2 Let's start with biodiversity. You would be forgiven for thinking there are no sites of special scientific interest within a 3km radius of the proposed quarry site, since:

At paragraph 3.5.3 of the Lea Castle Water Survey, Kedd Limited (the company appointed by NRS Aggregates to prepare the report) state that there are "No 5 Sites of Special Scientific Interest" within the 3km radius of the site".

Now when you read that quickly ("No 5 Sites"), you could be forgiven for thinking that the (frankly extremely odd wording) is saying that there are no SSSI areas within the 3km radius of the site but in fact there are five such sites: Hurcott Pasture, Hurcott and Podmore Pools, Stourvale Marsh, Puxton Marshes and Kinver Edge.

2.3 The Air Quality Review completed by Air Pollution Services dated 4<sup>th</sup> March 2020 (the "Air Quality Review") notes that Hurcott Wood (an ancient wet woodland and a SSSI (site of special scientific interest)) was excluded from consideration under the terms of the Environmental Assessment prepared on behalf of NRS Aggregates (the "EA"). The response from Kedd Limited who prepared the EA was that this was an "accident", albeit one that was never rectified even though other organisations had also raised concerns about potential damage to the Hurcott SSSI and the underlying water table.

2.3 At paragraph 179 of the Worcestershire County Council Scoping Opinion dated 29<sup>th</sup> June 2018, the Ramblers Association asked specifically for an assessment of how extraction would affect surrounding blocks of woodland, which needed to be protected from dust as well as any reductions in the level of the water table. This was never done.

- 2.4 The concerns of North Worcestershire Water Management (NWWM) (paragraphs 134 through 135) were that the hydrology and hydrogeology risk assessment should identify risk to the water dependent SSSIs). This was never done.
- 2.5 Similar concerns (relating to the safeguarding of the underlying water table and possible contamination) were raised by Councillor Shirley Webb in her email to the Worcestershire Development control team dated 1st October 2021. It would seem that her concerns were never addressed either.
- 2.6 It may be worth noting in this context that Severn Trent has designated Hurcott Pool as a reservoir. This surely makes it important to residents as well as to the natural environment that this water table is protected.

This leads nicely on for us to consider...

### **3. Water Quality**

- 3.1 Clause 3.9.7.2 of the Kedd Scoping Report provides that the surface water quality for the River Stour, in accordance with the most recent EA WFD Cycle, has already failed to achieve “good” status due to urban and transport issues. The report suggest that these factors cannot be associated with NRS. Kedd’s reasoning therefore seems to be that since the water quality is already “not good”, we might as well risk making it worse.
- 3.2 In this context, I bring the Enquiry back to “water quality” as one of the four priority areas for the Environment Act 2021. With the water quality already sub-optimal, it seems inappropriate at best to sanction further potential likely negative impacts on water quality.
- 3.3 The bore hole report prepared for NRS Aggregates dated 21st October 2019 shows that at 5m below ground level, the ground at the proposed quarry site is still highly porous sandstone, suggesting that water will collect below this level as well as any pollutants at the site.
- 3.4 The prevalence of sandstone is widespread throughout the area. Hurcott Woods is thought to have been the site of a Neanderthal settlement because the soft nature of the sandstone made it easy to carve out caves into the rock. There would also have been fresh water for drinking and fishing, filled not just from rainwater but from the water table in the area, with underground streams connecting the River Stour to the SSSIs at Hurcott and Broadwaters. The evidence produced by NRS Aggregates’ own bore hole report demonstrates in itself that there was a danger of pollution to the water table given the highly porous nature of the ground beneath the site.
- 3.5 Clause 5.2 of the Lea Castle Water Survey acknowledges that there is the “potential” to cause “generic” effects upon the water environment, including degradation of groundwater quality, which in turn would affect the surrounding areas and the SSSI’s. The Survey does not identify any measures to try and mitigate these potential effects. Maybe this is because the reality is that there aren’t any realistic mitigations..... other than not having the quarry there in the first place.

### **4. Air Quality**

- 4.1 I would like to move on to consider another of the four priority areas in the Environment Act 2021: air quality, and specifically the Air Quality Review prepared by Air Pollution Services dated 4th March 2020 (the “Air Quality Review”). At paragraph 8.2, APS state that the Environmental Assessment prepared on behalf of NRS Aggregates has downplayed the health effects of dust and the local air quality conditions. They contend that recent evidence demonstrates that dust

(PM1.0 and PM2.5) associated with mineral activities are associated with adverse respiratory and cardiovascular effects on health. They point out that local air quality conditions are already poor in the local area with an AQMA (Air Quality Management Area) declared nearby due to concentrations of particulates being measured well above the objective level.

- 4.2 APS further contend at paragraph 8.3 that that the EA assessment was based upon the mitigation measures identified by Kedd Limited **already having been implemented**, which would mean that mitigation would not remove these adverse effects. Rather the identified adverse effects would apply even after the relevant mitigations had been put in place. They go on to state that the EA assessment should have been focused on the 14 highly sensitive properties within the vicinity of the site inhabited by babies, young children and the elderly, which were expressly avoided.
- 4.3 APS concludes in 8.8 that the NRS assessment shows poor professional judgement, and that the competence of the Assessors should be questioned. APS even goes on to say that the EA consultant, although having 6 years environmental management experience, was not particularly experienced in Air Quality reviews, noting that he was not a member of any professional institute for air quality professionals.
- 4.4 At paragraph 8.9, APS state that taking account to all issues raised, the assessment conducted by NRS does not accurately represent the air quality and dust impacts of the development, which WILL result in adverse impacts to the local area. They go on to state that the EA assessment does not take into account where the effects are most likely to be most significant, and that therefore, the assessment was too uncertain and cannot be relied upon.

## 5. Proposed Adjustments to the NRS Aggregates Application

- 5.1 The participants in this Public Enquiry are all aware that the decision of the High Court was that the previous Inspector had misdirected himself as to the law in relation to the applicability of the “biodiversity net gain” principles in the Environment Act 2021, on the grounds that these were not force at the time Worcestershire County Council’s original decision was made in May 2022. The decision of the previous Public Enquiry was duly overturned and a new public enquiry required.
- 5.2 We note that NRS Aggregates is now seeking to make adjustments to its previous application, which are said to be the result of new technologies not available at the time their original application was made. It was pointed out from the floor during the open forum discussion proposed by the Inspector that in fact the relevant technology had been available since 2003 and was not therefore a change occasioned by an evolution in technology since the original application was made. Counsel for the Rule 6 Party made the procedural point that an applicant is expressly prevented from amending its planning application from the version which was originally submitted.
- 5.3 Determining whether or not NRS Aggregates is seeking to amend its application contrary to the procedural requirements of the applicable planning legislation is an important point for the Inspector to determine, since if NRS Aggregates was required to submit a fresh application for a quarry, the biodiversity net gain principles would apply and that may make it even less likely that an application to build a quarry in the proposed location would be successful. It would be very much in the interests of NRS Aggregates to try and amend its application in a way which might skew the environmental arguments in its favour based on the law as it stood on the date the original application was refused by Worcestershire County Council in May 2022 rather than rely on a new application to which the updated legislative provisions would apply.

## 6. Further References to the Environment Act 2021 to round up

6.1 I would like to make some further references at this point to the Environment Act 2021. In addition to the four priority areas referenced at the beginning of the presentation (of which air quality and water quality you will recall were two of those priority areas), the Act also contains five principles:

- The precautionary principle \*
- The prevention principle \*
- Environmental damage should be rectified at source
- The polluter pays principle \*
- The integration principle.

Let's make a quick reference to three of these principles, starting with the "polluter pays" principle.

### 6.2 "The polluter pays" principle

6.2.1 We should note that there is nothing to prevent the group which owns NRS Aggregates Limited from liquidating that company or otherwise closing it down so that there would be no money for (a) rectification of the land, and/or (b) providing compensation arising out of the potentially horrible health outcomes for the babies, children and vulnerable residents of Cookley and Wolverley, and/or (c) rectifying damage to the Environment caused by the quarry (if such rectification would even be possible). We sincerely hope that the appeal will be refused but in the hopefully unlikely event that the Inspector is minded to grant the appeal, a great deal more thought needs to be given to the appropriate value of a bond to be lodged in relation to the reinstatement of the site and to cover the potential costs of compensation under (b) and (c) above.

6.2.2 The Hurcott Residents found it amusing (although not in a good way) that Worcestershire Highways Authority considers that the increased construction traffic from the site poses no issue for the local road infrastructure. We would point out that Hurcott Lane, which is a cut through widely used by traffic between the Norton Road and the A456 Birmingham Road, has experienced six accidents over a period of fourteen months, five of which required attendance by emergency services. It is respectfully submitted that any bond to be lodged by NRS Aggregates should ensure that NRS Aggregates is charged with paying for effective physical measures to prevent construction traffic from being able to access this route.

### 6.3 Precautionary Principle:

The thrust of this principle is that we should not be doing things which might contribute to environmental degradation. "Environmental degradation" in this context would include:

- Damage to air quality (made clear in the APS Air Quality Review)
- Potential damage to the SSSI as a result of dust choking the leaves of trees in the ancient woodlands of the 5 x SSSIs, including Hurcott Woods
- Potential damage to the SSSI through contaminants entering the water table
- Damage to water quality generally through pollution of the water table caused by seepage into the highly porous sandstone on which the land is built supported by underground waterways connecting the River Stour to the SSSI at Hurcott and Broadwaters (bottom of Sion Hill)

- Damage to the biodiversity of the SSSI, whereby through destruction and/or degradation of the SSSI habitat, the birds, insects and animals reliant on that SSSI will be harmed. In the case of Hurcott Woods, that wildlife includes muntjac deer, otters and kingfishers.

#### 6.4 The Prevention Principle:

This principle provides that we should take steps to prevent anything which might contribute to environmental degradation, which might include:

- Putting a quarry within 600m of a school and the homes of elderly residents
- Putting a quarry within 1.2km of the Hurcott SSSI and within 3km of four further SSSI sites, with the concomitant risk of pollution to the water table, damage to ancient trees and the disappearance of the wildlife which relies on these sites
- Putting a quarry, the perimeter of which will be within 100m of a nursery, housing babies as young as three months old
- Destroying green belt without an overwhelming need to do so, in circumstances where planning has already been granted (2021) for the extension of the quarry licence for Sandy Lane quarry within the same Wyre Forest District planning authority.

6.5 In terms of the environmental mitigations proposed for NRS Aggregates, we find it deeply inappropriate that more bridleways and hedgerows might be considered comparable compensation for the foreseeable effects of decreased air and water quality on children, vulnerable persons and the wider community; or the potential irreversible damage to the ancient wet woodland of the Hurcott Woods SSSI (1.2km from the proposed quarry site) and/or the four other SSSIs within a 3km radius of the proposed site.

6.6 Whilst the presence of a SSSI in the vicinity of a proposed quarry is not a reason of itself to refuse planning permission, the presence of one is a matter which can weigh in the balance of whether or not to allow planning permission. Here we are talking about five separate SSSIs, all of which, according to the reports not prepared on behalf of NRS Aggregates, express genuine concern about the effect on the environment of a quarry. It is an obligation on the Inspector to take a view on any overriding considerations in relation to a particular planning application, and we would suggest that the presence of 5 separate SSSIs in the vicinity of the proposed site and the concerns expressed in relation to the environmental impacts of the quarry mean that the environmental considerations need to be taken into account.

6.7 The policy in support of s17(5) of the Act was published on 10<sup>th</sup> May 2022 and the draft policy statement was laid before Parliament on 11<sup>th</sup> May 2022. The draft policy made clear that if the science is in any way unclear, the prevention principle should be preferred in preference to the precautionary principle. The decision to refuse the appeal was dated 22<sup>nd</sup> May 2022. Whilst the draft policy statement did not become binding until November 2023 and then only in relation to policy making after that date rather than individual planning applications, the direction of travel was clear by the date the decision was made to refuse appeal on 22nd May 2022.

We ask this Public Enquiry to reject the appeal by NRS Aggregates Limited.

For the Hurcott Residents Committee  
Katherine Evans  
5<sup>th</sup> November 2024