

Date 23 September 2021
Our Reference ABRU1/BRE2319/1
Your Reference APP/M1900/W/21/3278097
Please ask for Andrea Bruce
Direct Dial 01782 349511
Facsimile 01782 712522
Email andrea.bruce@knightsplc.com



The Planning Inspectorate
Environmental Services
Central Operations
Temple Quay House
2 The Square
Bristol, BS1 6PN

BY EMAIL: environmentalservices@planninginspectorate.gov.uk

Dear Sirs

Land at Hatfield Aerodrome - Planning Appeal 3278097

We act for Brett Aggregates Limited, the Appellant in the above appeal, and write with reference to the request made pursuant to Regulation 22 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended) in connection with the above appeal (**Reg 22 Request**).

The Reg 22 Request seeks the following further information in support of the Environmental Statement (which we shall refer to as 'the first ES'):

- updated baseline data or robust justification as to why the baseline data in the ES remains valid; assessments in the ES to be reviewed and updated as necessary in response to any updates in the baseline data.
- a lighting assessment based on recognised guidance such as the Institute of Lighting Professionals (2013) PLG04 – Guidance on Undertaking Environmental Lighting Impact Assessments or for justification as to why significant effects would not arise as a result of lighting from the Proposed Development.
- an updated FRA and accompanying Water Environment Chapter should be provided which takes account of current climate change allowances advised by the Environment Agency <https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances> or provide a justification as to why this is not required.
- the drawings referenced within the ES (HQ 3/2 – HQ 3/12).
- a non-technical summary (NTS) incorporating all of the elements referred to above.

The Inspectorate is aware that the Appellant recently submitted a planning application for essentially the same development to the appeal. That application was validated on 3 September 2021 with reference PL/0232/21 and documents have been available on the Council's website since 22 September 2021 (**Resubmission**). Those documents include an environmental statement (which we shall call 'the second ES').

Knights plc
The Brampton
Newcastle-under-Lyme
Staffordshire
ST5 0QW

T 01782 619225
W knightsplc.com

The Appellant had previously explained the intention to make such a re-submission to the Community by various means including a leaflet drop, letters to key stakeholders, newspaper advertisement and establishment of a website in May 2021.

The second ES includes the updated baseline data, FRA, and non-technical summary referred to above. Updated drawings were also included.

In response to the Reg 22 Request the Appellant proposes to immediately submit the second ES.

The first advantage of proceeding in this way is that it is a comprehensive document which can be read as a whole rather than an addendum to the first ES. Secondly, it provides the updated information which is sought at an early date. The Inspectorate, the parties and interested persons will have the environmental information available to them for longer than the Reg 22 request anticipates.

There are, however, four differences between the first and second schemes which we should highlight. Paragraph 1.15 of the Planning Statement summarises the differences between the two applications as follows:

- the erection and operation of a concrete batching plant has been removed from the proposals;
- the standoff for mineral extraction operations in the Lower Mineral Horizon (LMH) to the bromate plume (also in the LMH) has been increased from 50m to 100m;
- there will be no dewatering (pumping) of the LMH; and
- the access road from the quarry entrance has been moved by 5m to the east to allow additional acoustic screening.

It is appropriate therefore for the Appellant to give notice that it will ask the Inspector to amend the description of development to remove the reference to the concrete batching plant as follows: “the establishment of a new quarry on land at the former Hatfield Aerodrome, including a new access onto the A1057, aggregate processing plant, ~~concrete batching plant~~ and other ancillary facilities, together with the importation of inert fill materials for the restoration of the minerals working”.

An alternative way of proceeding, to the same effect, would be for the Inspector to exercise his powers under s79(1) of the 1990 Act, if the Inspector is minded to allow the appeal and to grant planning permission, to issue a split decision by use of a planning condition in terms:

“Notwithstanding the grant of planning permission, no development to erect a concrete batching plant shall be undertaken.”

The additional differences between the two applications, could similarly be dealt with by way of condition, with a condition requiring development to be carried out in accordance with the submitted drawings and details, and, if considered necessary a condition stating no pumping should be undertaken of the LMH.

Accordingly the Appellant would invite the Inspector to substitute the Resubmission development in this appeal.

As will be familiar, in the 'Wheatcroft' judgment the High Court considered the issue of amendments in the context of conditions and established that "the main, but not the only, criterion on which... judgment should be exercised is whether the development is so changed that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation" (Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]).

No party would be prejudiced. It is evident from the Council's statement of case that they have considered the aspects of the development which engage Green Belt policy separately, including the concrete batching plant. The other Rule 6 parties do not raise any issues relating to the concrete batching plant, and the Committee Report (September 2020) would suggest that other third parties are in the same position.

Even if that were not the case, the concrete batching plant is a clearly severable part of the development. If consent were granted for it, there would be no obligation to build it. This is a good indication of the extent to which the concrete batching plant is, in effect, a 'bolt on' part of the first proposal. We are not aware of any person actively supporting the presence of a concrete batching plant. The Council now adopts the position that it objects to the concrete batching plant. In that new context, we assume that the Council welcomes such an amendment.

The increased stand off and the no pumping in the LMH could both be achieved by the operation of the Groundwater and Water Management Plan, which forms part of the appeal proposal, if considered appropriate, and so do not constitute a change of substance.

The change in the access road alignment is a very small alteration of 5m only to reflect a change in circumstance since the application for the appeal development was made and does not affect the issues raised by the Council, the Rule 6 parties or third parties in their representations in respect of the appeal.

In the Reg 22 Request the Inspectorate invite the Appellant to advertise the further information that would be submitted in response, albeit that this is not a requirement of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. The Appellant confirms its intention to do so and that such notice/advertisement will make clear the change in the description of the development.

The lighting assessment referred to by the Inspectorate was not required for the Resubmission. However, the Appellant will now commission such a report and make every effort to produce it to the Inspector and the parties by 19 October 2021.

The drawings requested were provided with the appeal documents but can be sent again, quickly. The

Appellant's planning consultant will contact you to discuss the best method of delivery of these documents to you.

Yours faithfully

A handwritten signature in black ink that reads "Knights". The letters are cursive and slightly slanted to the right.

KNIGHTS PROFESSIONAL SERVICES LIMITED

cc Hertfordshire County Council