RE: LAND AT HATFIELD AERODROME

PLANNING APPEAL REFERENCE: APP/M1900/W/21/3278097

LPA Reference: 5/0394-16

OPENING STATEMENT ON BEHALF OF THE APPELLANT

INTRODUCTION

This Opening Statement outline the Appellant's case, thus:

1. Start with the development plan
2. The emerging MLP
3. The history of the application
4. The views of statutory consultees
5. The reasons for refusal
6. Green Belt
7. Hydrogeology
8. Need
9. Other matters
    a. Noise
    b. Dust
    c. Flood risk
    d. In combination and cumulative effects
10. The environmental information
11. The second application

DEVELOPMENT PLAN

1. At the conclusion of this Inquiry, the Appellant will invite you to make a finding that the appeal proposal complies with the Development Plan. Given the significance of that submission, it is convenient to set out immediately why that should be so.

2. The Planning Authority in respect of this application is the Minerals Planning Authority, it being a county matter, and therefore determined by Hertfordshire County Council. That is a planning authority which has specialist experience and expertise in forward planning for the minerals needs of the county, and indeed the wider region, to supply, inter alia, aggregate minerals.

3. The Hertfordshire Minerals Local Plan Review (2002-2016) was adopted in March 2007 ('MLP'). It is the primary reference document within the Development Plan for the purposes of this application.

4. The MLP addresses the forward supply of minerals and commits the County Council to permitting extraction of primary aggregates so as to make an appropriate contribution to Regional needs for the Plan period[1].

[1] See paragraph 3.2.1

5. So, the MLP identifies areas in which mineral working might be encouraged in order to give clear guidance to users of the Plan both as to where permission is likely to be forthcoming, and where permission is unlikely to be granted during the Plan period[2].

6. Having undertaken an extensive site selection process in order to identify the most sustainable locations for future aggregate extraction[3], the County identified Preferred Areas for sand and gravel extraction and included Minerals Policy 3 to give effect to the outcome of that extensive search. That policy identified "Preferred Area 1: Land at former British Aerospace, Hatfield". It within that Preferred Area that one finds the appeal site.

7. Preferred Area 1, the appeal site, is the subject of some specific considerations which are set out within the Plan at its Appendix 8. It refers to the Ellenbrook Linear Park and supplementary planning guidance[4] in respect of the proposed country park, to which we shall turn during the course of the Inquiry.

8. Another specific consideration identified within the Plan is that it was known and well understood at the time that the Plan was consulted upon, examined and adopted that there was a bromate plume issue to address. The Plan's response to

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[2] See paragraph 3.4.1

[3] See paragraph 3.4.2

[4] CD 3/3

that issue was to identify that a more robust risk assessment may be required at this site in order to determine the risk of impact to the public water supply[5].

9. The Plan was drafted and adopted on the express and obvious understanding that Preferred Area 1 is Green Belt land.

10. The Hatfield Aerodrome SPG (November 1999) precedes the MLP. At that time, some 22 years ago, it was already clear that the Green Belt in this locality would form a part of the minerals strategy for the Council[6]. Given the ambition and the vision for public access and the creation of a landscape and network of habitats which were of wider and community value, it was necessary to use joined up thinking in dealing with the various issues which arose in respect of the Green Belt area and proposals for mineral extraction[7].

11. The appeal site straddles the administrative boundary between St Albans and Welwyn Hatfield and so the Welwyn Hatfield District Plan 2005 and the St Albans Local Plan 1994 are also in play. The Appellant will demonstrate that so far as these Plans are concerned, the proposals accord with the relevant policies of those Plans, including such policies that address Green Belt.

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[5] The specific reference in the MLP is to Bishop's Rise, referred to in the Inquiry papers as HATF

[6] See Section 9 at page 34 of that document

[7] See paragraph 9.7 at page 35 of the SPG

12. The person with the most experience of applying the Development Plan to minerals proposals in the County is not to give evidence at this Inquiry. He wrote three committee reports between 2017 and 2020, each of which is a model of well informed, careful and balanced consideration of the issues comprising some 47 pages of text and associated planning conditions. That Planning Officer considered that the proposal complied with the Development Plan and that there were material considerations, on balance, which ought to result in the grant of planning permission. So far as he considered that very special circumstances needed to be shown, he considered that such circumstances existed. Indeed, these same considerations resulted in members of this Mineral Planning Authority coming to exactly the same view, in 2017, when the Development Control Committee resolved to grant consent. In that context, the Emerging Minerals Plan is not in the least surprising.

THE EMERGING MLP

13. Relatively little needs to be said in Opening, but attention ought to be drawn at the outset to the Hertfordshire Minerals Local Plan (proposed submission draft of January 2019). Via this document, the County plans for a steady and adequate supply of aggregates to support sustainable economic growth and does so via the identification of suitable sites and areas. The County is planning for at least 31 million tons of land-won aggregates on the basis that there will be annual sales of

some 1.4 million tonnes[8]. Rather like the Plan which the Emerging Plan is intended to replace, it identifies preferred areas and specific sites. One such specific site is Hatfield Aerodrome[9]. There is, therefore, nothing in the Emerging Plan which undermines or puts into question the vision and approach of the extant Plan.

HISTORY OF THE APPLICATION

14. The Appellant will demonstrate that this is an application which has received close attention to all of its facets during the course of the six years that the Planning Authority has been seized of the issues. As CL explains in his rebuttal proof, there has been active, repeated and thorough engagement with the Planning Authority's professional officers and the expert staff of specialist consultees. Absent cogent evidence that they have got it wrong, those considered views should be given significant weight.

15. That put the Development Control Committee in the position that it was able to resolve to grant planning permission as long ago as 2017. Since then, nothing has changed which is adverse to the application. On the contrary, all that has changed is that the extent and detail of the available environmental information has increased to a point which is quite extraordinary. Consent ought to have been granted years ago.

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[8] See paragraph 8.7 of the Emerging Plan

[9] See Policy 4 on page 27

THE VIEWS OF STATUTORY CONSULTEES

16. There is no objection to the proposal from any specialist consultee dealing with:

(i) Highways impacts;

(ii) Ecological effects;

(iii) Landscape effects;

(iv) Flood risk;

(v) Noise;

(vi) Air quality, including as to dust;

(vii) Archaeology, heritage assets or the setting thereof.

17. The District Councils were consulted on the application and produced responses which did raise some issues which fall into the category above. Neither of them have produced any evidence in support.

18. This leaves the bromate plume question on which the Environment Agency has provided its response and raises no objection. I deal with hydrogeology below.

19. It follows, therefore, that there is no specialist statutory consultee which maintains any objection to the appeal proposal.

REASONS FOR REFUSAL

20. The first reason for refusal is a specific and narrow objection in respect of the Green Belt, which I deal with below.

21. The second reason for refusal was that the scheme did not provide for reclamation within a reasonable timescale. This reason for refusal is not pursued by Hertfordshire County Council.

22. The third reason for refusal was concerned with additional HGV traffic, but solely in respect of the noise and dust which would allegedly be generated as a result. This reason for refusal is not pursued by Hertfordshire County Council, but I address the noise and dust question below.

23. The fourth reason for refusal is extensive and I do not repeat it, but it is essentially that it has not been demonstrated that the risks to the water environment from the mineral working are acceptable. In this regard, the Planning Authority, the Environment Agency, Affinity Water and the Appellant have agreed that the bromate issue does not give rise to a reason for the refusal of planning permission, subject to the imposition of appropriate planning conditions, which refer to a groundwater and water management plan. I will come to an additional condition to strengthen the position, below.

24. It follows, therefore, that the Planning Authority's principal case at the Inquiry is concerned with the Green Belt and it is to that which I now turn.

GREEN BELT

Law

25. The Appellant will advance the following propositions:

(i) Mineral development is not inappropriate development in the Green Belt: *Samuel Smith Old Brewery (Tadcaster) v. North Yorkshire County Council*[10], particularly at paragraphs 11 and 12 – "*... the openness proviso is in terms directed to forms of development other than mineral extraction...*"[11];

(ii) There was no intention on the part of the Secretary of State to make a significant change to national policy in respect of Green Belt when drafting NPPF 2012, cf. PPG2: *Sam Smith (Supra)*; *Redhill Aerodrome Limited v. Secretary of State for Communities and Local Government*[12] at paragraph 16[13];

(iii) Some level of operational development for mineral extraction sufficiently significant as operational development requiring planning permission has to be appropriate and necessary in the Green Belt without compromising the two objectives. The policy was designed for those situations generally

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[10] CD 9.4

[11] We know that in respect of PPG2, the Secretary of State understood his own policy to mean that, in the context of minerals development, surface mines are not inappropriate development in the Green Belt and that there is no openness proviso in national policy [CD 9.4A]

[12] [2014] EWCA Civ 1386; [2015] PTSR 274

[13] CD 9.7

encountered in mineral extraction: *Europa Oil and Gas Limited v. Secretary of State for Communities and Local Government*[14];

(iv) Visual impact is not a necessary part of an assessment of openness; *Sam Smith (Supra)* at paragraph 39[15];

(v) The NPPF sets out the terms for a balance which may demonstrate very special circumstances, and the benefits and harms which may go into that balance is not restricted in scope; *Redhill Aerodrome v. Secretary of State for Communities and Local Government (Supra*) at paragraphs 17 and 31-37; *Compton Parish Council* at paragraph 72[16]

26. The Appellant will demonstrate that, correctly understood, the appeal proposal is not inappropriate development in the Green Belt.

27. So far as the potential sites for sand and gravel extraction in Hertfordshire is concerned, the Appellant will demonstrate that there are no alternatives, whatsoever, for sand and gravel extraction other than in the Green Belt[17].

28. How then, would the quarry be worked? The plant site is to the north and west, distant from the Hatfield Road and proximate to other mineral infrastructure, namely the conveyor from the Cemex site. So far as the workings are concerned,

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[14] [2013] EWHC 2643 (Admin); CD 9.1

[15] CD 9.4]

[16] *Compton Parish Council v. Guildford Borough Council and Others* [2019] EWHC 3242 (Admin) [CD 9.8]

[17] Proof of evidence of ST [BAL3/1] at paragraph 4.37

that would be on a phased scheme in seven parcels A to G. The Appellant will contend, therefore, that the assessment of the effects of the working must necessarily take account of:

(i) The fact that phased working and restoration will mean that only portions of the site will be being worked at any one time;
(ii) Other parts of the site will remain open with attendant public access;
(iii) When phases are restored then public access will be restored;
(iv) It is inappropriate to assess the effects upon the Green Belt other than on this phased basis.

29. The working method is both typical and entirely appropriate to the site as will be demonstrated by GM[18]. Likewise, the processing plant is entirely typical and indeed can be seen in no dissimilar type on the adjacent Cemex site, but in any event, is entirely consistent with what is found elsewhere for sand and gravel extraction in the southeast[19].

30. CL will demonstrate that the particular characteristics of the Green Belt at and around the appeal site are consistent with the grant of planning permission for the appeal proposal. Such is consistent with the Development Plan, the fact of previous and adjacent mineral working and the highly self-contained nature of the

[18] See, in particular, BAL2/1 at paragraphs 8.1 to 8.5

[19] See paragraph 4.37 of ST's proof at the first sentence

application site. It will be the Appellant's case that the effect upon openness is limited due to the presence of existing mature vegetation and/or development[20].

31. The largest element within the plant site (in terms of massing) would be the stockpile of as-dug mineral, which could potentially have an effect upon openness. However, the Appellant will submit that the correct and fair assessment of the effects of the stockpile would be to take fully into account those times and periods when the stockpile will have diminished and be very much smaller. Moreover, such features of mineral working, of similar scale are accepted by the Mineral Planning Authority locally. Mounds of material are the natural consequence of the workings.

32. Further, the Appellant will demonstrate that the campaign method of working is entirely appropriate because it provides for the security of the groundwater resource. So much has been plain throughout the Appellant's engagement with the Minerals Planning Authority[21].

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[20] CL's proof of evidence [BAL/7/1] at paragraph 4.37 and following

[21] See, for example, the Planning Statement [CD 1.1] at paragraph 3.50 which states: "*Monitoring of groundwater levels at the application site shows that they are at their lowest between July and December (i.e. the last half of the year). In view of this and to avoid the need for pumping, much of the LMH would be excavated by campaign for up to six months in the year (divided into two or more campaigns). As with the UMH, as dug mineral would be transferred to the plant site using articulated dump trucks (typically a fleet of up to six).*" See further the GWMP [CD 1.6] at paragraph 2.2.2: "*The LMH is partially or fully saturated depending on the season and phase location and a methodology for mineral extraction has been devised for each of these scenarios and is described below. The extraction of the LMH will be undertaken on a 'wet' campaign basis during periods of the year when the LMA is at its seasonal low*."

33. In the alternative that it is necessary to show very special circumstances, which is not accepted, the appeal proposal easily demonstrates VSC for the eight reasons given by CL[22].

HYDROGEOLOGY

34. The Green Belt issues cannot be adequately assessed just from plans. They require careful appreciation of spatial and temporal dimensions. The same applies to hydrogeology. To be added to those taxing demands on lay-understanding are: the dual porosity nature of the Chalk aquifer, the role of the later deposited sands and gravels which lie unconformably on the Chalk; along with an appreciation of what is significant in terms of chemical analysis.

35. For a planning application, the correct and most helpful starting point in assessing this issue is not from a detailed hydrogeological description of the aquifer, the bromate plume nor the approach of using the HATF scavenger well to contain the plume. On the contrary, the key question is whether appropriate planning conditions and controls can ensure that the working is undertaken in a fashion and with sufficient control that an unacceptable risk to groundwater resource is avoided.

36. The answer to this key question is to be found in the combination of:

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[22] BAL/7/1 at paragraphs 5.34 to 5.38

(i) The remediation regime which is in place pursuant to Part IIA of the Environmental Protection Act 1990;

(ii) The use of the three measures of suitability of the working, as proposed by the Environment Agency;

(iii) The implementation of the Groundwater and Water Management Plan;

(iv) The use of a planning condition to limit dewatering of the LMA, the terms of which can be substantially agreed.

37. Further, and in addition, there will be an agreement with Affinity Water to secure its interests. This is entirely appropriate. Affinity Water has common law, riparian, rights in the groundwater which is abstracts from its boreholes. It is perfectly proper for such private rights to be secured by reasonable arrangements as between a mineral operator and the statutory water undertaker. The planning system is familiar and used to dealing with controls and enforcement mechanisms which operate within the public and public law sphere. This does not mean, however, that private controls are either inappropriate nor are they irrelevant. They are, of course, material because they are a further means by which the operations may be and will be both controlled and monitored.

38. In the light of the above, four parties[23] have been able to agree, in short summary (and reference to the document and full context will be necessary):

[23] Environment Agency, Affinity Water, HCC, Brett

(i) That the proposed quarry has been subject to a detailed assessment which demonstrates that quarrying can be undertaken at this location in a manner which will not disturb the plume, jeopardise current or further management of the plume or impact upon public water abstractions or groundwater resource potential now or in the future provided the requested planning conditions are included in any permission granted;

(ii) The concentration of bromate in the LMA is insignificant;

(iii) The southern plume boundary has been shown not to move into the proposed quarry site;

(iv) The ratio of bromate concentrations between the LMA and the Chalk has stabilised;

(v) There is no plausible scenario under which bromate could migrate onto the proposed quarry at sufficient concentrations to cause a long term problem;

(vi) The Groundwater and Water Management Plan, to be agreed by specialists, is comprehensive and will allow for adequate controls to ensure that controlled waters are protected.

NEED

39. It will be necessary to deal in some detail with both the policy and the factual position during the course of the Inquiry. For the purposes of Opening, the Appellant simply emphasises the importance to be attached to a steady and

adequate supply of aggregates[24]. Likewise, the Appellant will emphasise that there is no maximum landbank level, but that while the minimum level (here, 7 years) is reached, this is a strong indicator of urgent need.

40. In Hertfordshire, the current landbank is, the Appellant will contend, tenuous. It may be above 7 years if the ten year average sales are used, or it may be below 7 years if the East of England Aggregate Working Party sales figures are used. Whatever figures are used, the trend is definitely downwards and this is exactly the point which is articulated in officers' reports on aggregate mineral applications, including in respect of this case[25].

41. The Appellant's case will be that the appeal site is needed, alongside the grants of other permissions for sand and gravel in order to maintain the sort of supply which is necessary to support the economy. It must never be forgotten that many other planning objectives, for which there is real social and economic need, are

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[24] See NPPF paragraphs 209, 217, particularly at paragraph 213, as explained in CL's Appendix D from D3 onwards

[25] See paragraph 3.1 of the officer's report. By way of summary "*There is a need for the minerals at the site necessary to ensure that adequate supplies are available to meet the county's agreed apportionment of regional supply*". See further, paragraph 8.5 at page 27 which is worth setting out in full: "*The LAA 2019 confirms that the landbank was slightly above the minimum requirement, but that mineral reserves (landbank) have declined in line with annual sales. The LAA highlights the need to add to the supply of sand and gravel. This will necessitate the grant of planning permission either for extensions or existing sites or new sites.*"

fundamentally founded in the provision of a steady and adequate supply of minerals. In short, you cannot have one without the other.

OTHER MATTERS

Noise

42. The Appellant has responded to the third reason for refusal via the evidence of MD and GA. As those proofs of evidence show (indeed and as the environmental information has always shown) the suggestion that there would be significant effects arising from HGV traffic is without any evidential basis.

43. MD has demonstrated that the additional HGV movements would give rise to a worst case noise increase at the most sensitive, unshielded receptor of some 1.3dB(A) for the L_{Aeq},1-hour. The impact is negligible by reference to the applicable guidance.

44. Much the same position will be shown to be the case in respect of dust/air quality. It is of course important to note that the LMH mineral will be worked wet. It is also important to note the planning conditions to which any consent would be subject and it is that management of mineral extraction and handling which ensures that mineral workings do not give rise to unacceptable effects in this regard. The proof of evidence of ST is relied upon as to the Appellant's systems, independently audited, in this regard.

Flood Risk

45. The Appellant's short point will be that runoff from the appeal proposal will not increase runoff elsewhere. The Appellant will rely on the flood risk assessment which accompanied the 2016 application as updated in the 2021 ES. Neither the the Environment Agency nor the Lead Local Flood Authority[26] object.

In Combination and Cumulative Effects

46. The Appellant will, in due course, demonstrate that the Planning Officer was quite correct to conclude[27] that cumulative impact and the effect of mineral working over decades at Hatfield Quarry is appropriately controlled by conditions in order to minimise adverse effects. The Officer correctly concluded that the proposed mineral workings would not, by reason of appropriate conditions, give rise to significant effects.

47. The Appellant will contend that the Environmental Statement is also quite correct to conclude[28] that no significant impacts have been identified for any of the environmental topics considered as part of the Environmental Statement. There would, likewise, not be any significant accumulated impacts from two or more sources. With respect to the authors of such proofs of evidence which address cumulative impacts, the evidence has not been engaged with and there is no substantive or technical evidence going the other way.

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[26] See the Rebuttal Proof of IW [BAL10/1], eg at his paragraph 2.5

[27] Paragraph 9.10 of the September 2020 Officer's report

[28] See its Chapter 13 and in particular its paragraph 13.34

The Environmental Information

48. At this stage of the Inquiry, some orientation is worthwhile. The purpose of EIA is to provide a structured approach to assessing environmental effects in respect of a narrow class of development proposals which are generally substantial in one respect or another. That enables both consultees and the public to engage with the Environmental Statement and to provide environmental information of their own. When all of that material is drawn together it comprises the environmental information upon which the decision is made. The provision of the Environmental Statement is not intended to be, and is not, an obstacle course.

49. In this case, the Environmental Statement is thorough, expertly researched, assessed and compiled. Nobody seriously suggests otherwise. It is for that reason that the Appellant drew attention at the outset of this Opening Statement to the position of statutory and expert consultees, none of whom now object to the proposal on any technical or environmental ground. The Appellant invites any participant in this Inquiry to identify, point out and justify any deficiency in the environmental information and its associated assessment, having regard to the purpose for which it was generated. Mere assertion will not do.

The Second Application

50. By letter dated 23rd September, Knights wrote to PINS to explain the course of action to be taken in respect of the Regulation 22 request and in respect of its proposal to substitute the 2021 resubmission for the appeal scheme. It explained the four main differences and why those differences were in fact designed to address concerns expressed by interested parties and consultees and of course

those of the Planning Authority. That letter was followed by written Submissions dated 2nd November 2021, the purpose of which was to give fair opportunity to all parties to understand the arguments to be advanced in support of such a course of action.

51. Since that time, the Appellant has seen the Planning Authority's Submission dated 9th November 2021, with which the Appellant agrees, particularly so far as its conclusions on both limbs of the *Holborn Studios* case is concerned.

OVERVIEW

52. In overview, the Inquiry will see a diligent process of plan preparation, consultation, assessment, refinement and framing of appropriate and robust controls. That enables a private minerals operator to deliver what society needs. There is no public provision of aggregates.

53. While others wish to voice a range of concerns, which are very much respected, the Appellant invites other participants to both appreciate the extensive work which has taken place, and to engage with that evidence. When that is done, it will rapidly become clear that permission ought to have been, and should now be, granted.

Richard Kimblin QC Monday 15th November 2021

No. 5 Chambers
London • Birmingham • Bristol • Leicester

List of abbreviations of witnesses' names

GA	Gordon Allison
MD	Michelle Dawson
CL	Chris Lowden
GR	Gregor Mutch
PR	Peter Rowland
ST	Simon Treacy
IW	Ian Walton

Submissions on amendment

INTRODUCTION

1. The appellant made written submissions on amendment dated 2 November, which followed a letter dated 23 September, so that the parties would know the appellant's position. The material below merely repeats those submissions, save where the changes are marked up.

2. The Inspector has the following powers:

   a. To allow or dismiss the appeal: s79(1) of the Town and Country Planning Act 1990[29];

   b. To grant planning permission subject to such conditions as the Inspector sees fit[30];

   c. A condition may have the effect of modifying the development proposed by the application.

3. The case law which addresses conditions which amend the development proposed and on whether to amend a proposal at appeal stage focuses on the question of

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[29] On an appeal under section 78 the Secretary of State may—
(a) allow or dismiss the appeal, or
(b) reverse or vary any part of the decision of the local planning authority (whether the appeal relates to that part of it or not), and may deal with the application as if it had been made to him in the first instance

[30] Section 70(1) of the 1990 Act

whether to do so would be a grant of consent for something which, in substance, was not applied for[31].

4. For EIA development at appeal stage, the dominant procedural requirements are contained in the Town and Country Planning (Environmental Impact Assessment) Regulations and the Town and Country Planning Appeals (Determination by Inspectors)(Inquiries Procedure)(England) Rules 2000. These regulations and rules assist in assessing whether to allow the proposed amendments will cause prejudice to a party or participant such that the amendment should not be permitted.

The Description of Development and the Proposed Scheme Amendments

5. The description of development is:

"*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*"

6. There are four proposed amendments. They are each quite different in character to each other, as will be explained. They are:

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[31] *Bernard Wheatcroft Ltd v Secretary of State for the Environment* [1980] 43 P&CR 233 at p241: *"is the effect of the conditional planning permission to allow development that is in substance not that which was applied for?"*

a. move the access road from the quarry entrance by 5m to the east to allow additional acoustic screening. This is a change which is barely perceptible by comparison of the 2015 drawing (HQ 3/2) and the 2021 drawing (HQ 7/2);

b. the standoff for mineral extraction operations in the Lower Mineral Horizon (LMH) to the bromate plume (also in the LMH) to be increased from 50m to 100m. The 'standoff' is an area of the LMH which could be worked but will not be. It is a precaution which is related to the bromate plume. The LMH is in hydraulic continuity with the Chalk. The UMH is not. A 100m standoff from the edge of bromate plume is proposed. See HQ 37/38 application drawing in 2021 application.

c. deletion of the erection and operation of a concrete batching plant from the proposals [see App 3/1 to the 2016 ES for a plan]. The concrete batching plant plays no direct role in the winning and working of minerals. Its co-location with the quarry plant, in a quarry has self-evident merits, but its presence or absence is irrelevant to operation of the quarry.

d. no significant dewatering (pumping) of the LMH; During the course of consultations with the Environment Agency it was accepted that small scale dewatering of the LMH would be acceptable (EA letter of 3 January 2018). An abstraction licence has been granted. The appellant would be content to agree a planning condition which makes clear just how limited the abstraction would be.

SUBMISSIONS

7. The appellant submits that there is no reason at all to proceed on the basis of the 2016 scheme. That submission is developed by reference firstly to whether the change would be a grant of consent for something which, in substance, was not applied for. Secondly, the submission turns to whether any party or person would be prejudiced.

Access road

8. The proposal is entirely unchanged in principle. The application is to take an access to the quarry off the Hatfield Road. The locations of the 2016 and 2021 schemes are so similar that the visibility splays overlap. In planning terms, there is no material difference because there is no materially different location, no person is more or less affected, the visual effects are materially the same, the safety considerations remain the same (i.e. both attract no highways objection).

9. It follows that it cannot be said that such a modest change results in consent for something different to that which was applied for. It appears that there is no objection in this regard.

Stand off

10. This change is different in character to the 5m change in the location of the access road. The difference is that the Appellant proposes not to develop a part of the scheme for which consent is sought. It is an example of an Appellant pulling back on the scope of the proposal. The proposal remains a sand and gravel quarry in

the same location, but with a modest change to the totality of the area and depth extracted. It is a change which the Appellant would be quite entitled to make if consent were granted for the 2016 scheme. A planning permission of this nature does not carry with it any obligation to work out the whole of the consented reserve.

11. The working method, phasing and restoration are all unaffected. The scheme is in all these respects the same.

12. The position would be different if the proposed amendment were reversed, i.e. if the Appellant sought to excavate more than originally applied for. But that is not the case.

13. It follows that it cannot be said that such a modest change results in consent for something different to that which was applied for.

Batching plant

14. This change is analogous to the position in respect of the stand off. It is a change which deletes something which has been applied for.

15. The batching plant is a discrete building which is wholly severable from the remainder of the consent. In addition to being severable, it is quite independent of the quarrying process. In other words, the quarrying activity would continue in just the same way either with or without the batching plant.

Pumping of Groundwater

16. This change also has something in common with the stand off and batching plant amendments in that it is a change which involves not doing something which had previously been proposed. Further, any limited pumping is not development which requires planning permission. It requires an abstraction licence. Nevertheless, the planning regime is capable of limiting pumping.

17. It is a change which has no surface manifestation. It is really just a change in the timing of the excavations. Nobody has positively advocated dewatering of the LMH. It appears to follow that if there is a change in effects then the change is beneficial.

Prejudice

18. In large measure, the amendments have come about as a result of consultation responses. Those consultation responses appear on the Council's website. The amendments are the subject of a full and comprehensive environmental statement. The environmental statement has been in the public domain[32] since 24th September 2021 and has been the subject of advertisement in advance of the preparation of proofs of evidence.

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[32] The resubmission was validated on 3rd September. The documents were on the Council's website from 22nd September and the parties were expressly told this in the letter from Knights to PINS of 23rd September.

19. Any person who wishes to support or to object to any aspect of the development or to enquire into its environmental effects has a full opportunity to:

    a. Read the materials

    b. Participate as a Rule 6 party or to contribute to the work of such a Rule 6 party;

    c. Submit written evidence

    d. Appear to make oral representations

20. All four of the amendments referred to above have either not been the express focus of objection (access road) or are amendments which would tend to meet concerns which have been expressed by consultees and objectors. It would be irrational to object to an amendment which serves to reduce the effect of a matter which has been complained about.

21. The materials have received greater levels of notification than is required by the EIA Regulations in that the 2021 ES has been advertised.

22. There has been no disturbance to the normal operation of the 2000 procedure rules.

23. There has been and would be no prejudice resulting from the amendments discussed above.

24. CHPC/EARA have made a submission by email dated 8th November at 20:53. It is said: *"The four main parties agreed the CD list with no effective engagement with CHPC or EARA – a prejudicial action against CHPC & EARA".*

25. The relevant facts are as follows:

	Date (Time)	**From**	**To**	**Summary**
1.	16/10/2021 (08:47)	Appellant	CHPC	Providing draft CD list (as agreed with HCC) for comment
2.	17/10/2021 (20:30)	CHPC	Appellant	Response to email at 1 above - will review CD list after Wednesday (20/10/2021)
3.	18/10/2021 (10:52)	Appellant	CHPC	Sending updated CD list for comment
4.	18/10/2021 (20:43)	CHPC	Appellant	Reply to 3 above - will review CD list after Wednesday. Complaint that appellant not meeting timetables re SoCG and S106. May raise with Inspector and possible application for costs
5.	20/10/2021 (17:35)	Appellant	CHPC	Explaining procedure re CD list and advising HCC wish to add further docs. Confirming that Appellant has chased HCC re SoCG and S106

6.	22/10/2021 (17:29)	Appellant	CHPC	Providing agreed SoCG and Appendix, draft S106 and updated CD list
7.	22/10/2021 (17:47)	Mimecast	Appellant	Notification that documents have been downloaded by CHPC
8.	24/10/2021 (19:49)	CHPC	Appellant	Lack of consistency with naming of CDs and suggested additions
9.	24/10/2021 (20:02)	CHPC	Appellant	Thanking for Word version draft S106 and asking how EARA/SRA can contribute additional comments
10.	24/10/2021 (20:14)	CHPC	Appellant	Asking if portal has been set up
11.	25/10/2021 (11:17)	Appellant	CHPC	Response re portal, S106, SoCG and CDs queries - response to emails at 8-11 above. Invited comments on S106 to Knights and Brian Owen at HCC.
12.	25/10/2021 (12:10)	Appellant	CHPC	Re CD list marked up by CHPC/EARA and attaching Bengeo decision

26. The was active engagement, and indeed assistance. The point is irrelevant to whether to substitute.

27. Next it is said that the water SoCG was late. This too is irrelevant to the issue.

28. Next it is said: *"The inclusion of the 2021 application is in our view not procedurally fair. If CHPC and EARA are expected to have read the 100*

documents of the 2021 application the Inquiry should be deferred. If not CHPC and EARA will have been seriously disadvantaged and thus prejudiced against."

29. There is a reference to 100 documents. This must be a reference to the 2021 ES and application documents. First, it was necessary to provide updated environmental information. That is a quite separate issue. The 2021 ES would be in the inquiry in any event. Moreover, the consultation period on the second application ends mid-Inquiry (20 Nov) and so it is plain that the public has had the statutory period to consider the application and its environmental information[33]. Further, the differences are quite modest and have been succinctly summarised[34].

30. CHPC/EARA do not say:

    a. There would be new or different impacts;

    b. There is something about the changes to which they object;

    c. Do not argue that the changes are substantial;

    d. Do not disagree with the submission that changes are designed to address some of their concerns.

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[33] Date Received 03/09/2021; Date Valid 03/09/2021; Start of Public Consultation 21/10/2021; Public Consultation Expiry 20/11/2021

[34] CD 10.3

31. In contrast, the Council has responded to indicate that the red line is almost (or exactly) the same for both, that no new or additional impacts are anticipated and that most of the changes could have been required by condition on the original application in response to issues raised by the Council and third parties. It is therefore not considered that the changes are substantial in the context of the whole.

32. The Council is correct to identify that all procedural rules have been complied with on the new application, the paper trail is clear, all parties have been kept informed of what approach the Appellant's are adopting and all parties have therefore been able to prepare and present their evidence in the light of the potential substitution.

33. There would be no prejudice.

34. Lastly, to address the scenario that the Inspector considers the use of a condition to split the decision and remove the batching plant would be an unreasonable approach, the appellant has drafted and will submit a unilateral undertaking to the same effect.

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RE: LAND AT HATFIELD

AERODROME

PLANNING APPEAL REFERENCE:

APP/M1900/W/21/3278097

LPA Reference: 5/0394-16

OPENING STATEMENT ON BEHALF OF THE APPELLANT

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

Richard Kimblin QC

No5 BARRISTERS CHAMBERS

London • Birmingham • Bristol • Leicester
Tel: 0845 210 5555