RE: LAND AT HATFIELD AERODROME

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

LPA Reference: 5/0394-16

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

INTRODUCTION

1. These Closing Submissions seek to summarise, but not repeat, the evidence. They take the Statements of Common Ground largely as read and likewise, the Appellant's notes and other materials as submitted during the course of the Inquiry.

2. The structure follows the Inspector's main issues along with some additional headings to pick up the benefits, planning balance, including Development Plan compliance, and certain procedural matters, before turning to the important question of conditions and obligations.

GREEN BELT

3. This is one of two issues which have been central to the evidence heard by the Inquiry, the other being bromate. HCC has chosen to address bromate first, and to say less about Green Belt. The structure of these Submissions is to turn, first of all, to the Development Plan, secondly to national policy, thirdly the correct interpretation and application of paragraph 150 of the Framework, and fourthly to turn to the parties' positions, at the close of the evidence.

4. This last issue will require a careful examination of the evolution of the Council's Green Belt case, so that its final position can be understood in its proper context.

5. Lastly, I will turn to the Appellant's concluding submissions on the Green Belt issue.

6. 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.

7. 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

8. 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].

9. The MLP is essentially silent on Green Belt issues. The allocations are located in the Green Belt, but there is no policy in the MLP which deals with development control issues as far as the preferred areas are concerned. It is evident that the MLP was drafted, examined and adopted on the basis that it would be a natural consequence of the MLP that there would be mineral workings, of substantial size and duration, in the Green Belt.

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[3]. Indeed, it was demonstrated via the Appellant's evidence, and not contested, that the Council has very little choice other than to allocate sites that lie within the Green Belt. Given the 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[4].

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[2] See paragraph 3.4.1

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

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

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. As Mr Tunnell confirmed in his evidence, and was not disputed by any party, the two District Plans do not include any policy which addresses openness in the context of mineral development. The agreed position at the close of the Inquiry is that there is compliance with any and all policies in the Development Plan which touch upon Green Belt issues.

12. In Opening, the Appellant advanced the following propositions as to mineral development in the Green Belt.

(i) Mineral development is not inappropriate development in the Green Belt: *Samuel Smith Old Brewery (Tadcaster) v. North Yorkshire County Council*[5], particularly at paragraphs 11 and 12 – "*... the openness proviso is in terms directed to forms of development other than mineral extraction...*"[6];

(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*

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[5] CD 9.4

[6] 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]

Limited v. Secretary of State for Communities and Local Government[7] at paragraph 16[8];

(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 encountered in mineral extraction: *Europa Oil and Gas Limited v. Secretary of State for Communities and Local Government*[9];

(iv) Visual impact is not a necessary part of an assessment of openness; *Sam Smith (Supra)* at paragraph 39[10];

(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[11]

13. These propositions were not disputed by any party in evidence. None are contested in any closing submission.

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[7] [2014] EWCA Civ 1386; [2015] PTSR 274

[8] CD 9.7

[9] [2013] EWHC 2643 (Admin); CD 9.1

[10] CD 9.4

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

14. It is worthwhile to say a little more about the *Lodge House* Secretary of State decision in the context of the relationship between paragraph 150 of the Framework and the former PPG2, particularly its paragraphs 3.11 and 3.12. The report of Mr Andrew M Phillipson addresses the issue in detail at his paragraphs 13.3 to 13.7 [CD 9.4A]. Those paragraphs are incorporated in full into these Closing Submissions. The Secretary of State expressly agreed with those paragraphs[12].

15. It is absolutely plain from *Redhill Aerodrome*[13] that the Courts do not regard the Framework's expression of government policy to be a significant change from the former PPG2. That very firm position, as expressed in *Redhill Aerodrome*, is further consolidated in *Samuel Smith*[14], where Lord Carnwath draws attention to the fact that mineral extraction is not expressly subject to the openness proviso, but may be regarded as not inappropriate. The shortened version in the Framework is a recasting of that policy, but is not to be read to mark a significant change of approach. If that had been intended, then one would have expected it to have been signalled more clearly.

16. The judgment in *Samuel Smith* was given on 5th February 2020, nearly a year after the Secretary of State issued his decision letter in the *Ware Park (also known as Bengeo*) case. It is apparent that the learning from the Supreme Court on the

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[12] See DL9 and 10

[13] [CD 9.9], particularly at paragraph 16 and the three points set out thereto

[14] [CD 9.4], particularly at paragraphs 11 and 12

relationship between this key provision, here, in paragraph 150 of the Framework and the former PPG2 was not available to either the Inspector or the Secretary of State who were seized of the *Ware* case. From the above, it follows that openness will of course be taken into account in assessing the harm to the Green Belt in a minerals case, but it will not be a bar to regarding minerals development as appropriate in the Green Belt.

17. It is convenient now to turn to the way in which the Council expressed itself in its reasons for refusal and its Statement of Case.

18. The first reason for refusal comprises the following elements:

(i) The proposal is inappropriate development;

(ii) Specifically related to the processing plant;

(iii) The concrete batching plant;

(iv) Use of haul roads;

(v) Perimeter bunds;

(vi) Openness would be harmed;

(vii) VSC do not exist.

19. The Statement of Case went further and in slightly different directions. In respect of the Green Belt objection, the reasons for refusal were expanded upon as follows:

(i) The concrete batching plant is inappropriate development[15];

(ii) The totality of the plant area is excessive, as a function of the proposed working method, and would result in significant adverse impacts on openness, over and above those intrinsic to mineral extraction[16];

(iii) The size of the stockpiling area is very large at 3 hectares[17];

(iv) The processing plant at Hatfield Quarry is less than 4.5 hectares in area[18];

(v) The processing plant size is a consequence of the campaign method of working[19];

(vi) There would be continuous trafficking of large articulated haulers;

(vii) There would be direct views into the plant site from the south.

20. Via two Statements of Common Ground, in respect of operational detail and hydrogeology, the Council ceased to argue the following[20]:

(i) That the size of the as dug stockpile was excessive. Rather, the as dug stockpile would be appropriate for the campaign method of working which was itself justified by the need to avoid impacts on the bromate plume;

(ii) The 3 hectares required for that stockpile was therefore a natural and inevitable consequence of the mineral extraction;

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[15] See paragraph 6.3 of the Statement of Case produced by HCC

[16] Paragraph 6.4 of the Statement of Case

[17] Paragraph 6.15 of the Statement of Case

[18] Paragraph 6.16 of the Statement of Case

[19] Paragraph 6.17 of the Statement of Case

[20] See ID2 and CD 8.2

(iii) The erection and use of the processing plant was appropriate;

(iv) The use of vehicles to haul the material to the plant site was also appropriate;

(v) There was no objection by way of an alternative approach of transporting mineral, namely conveyors;

(vi) The perimeter bunds were likewise necessary, albeit that the Council maintained its position that the overall processing plant site area was too large;

(vii) The position adopted in its Statement of Case as to the comparable site area at Hatfield Quarry was substantially amended by the Statement of Common Ground which recorded, "*The Brett proposal occupies a single operational area of 11ha, which is bunded on three sides. The Cemex site has three areas, although the processing site is 4.8ha. The three areas total 9ha (excluding the conveyor route between them) and include a number of operations which are not sought by Brett*."

21. The Appellant has undertaken not to construct the concrete batching plant and for that to be secured by a deed executed under Section 106 of the 1990 Act.

22. In the above context, it can be seen that the Council's Green Belt case narrowed very substantially prior to the opening of the Inquiry. Its case was that the plant site was larger than it needed to be by reason of the deletion of the concrete batching plant from the scheme and that the totality of the area, being 11 hectares, was too great. At most, that seems to be put as a more or less direct comparison with the Cemex plant site which appears to be 0.8 hectares smaller. The Council's

evidence was limited to comparing the proposal with only one other site, that of Cemex's Hatfield Quarry, established as long ago as in the 1960's.

23. In order to make out its Green Belt case, the Council relied on a proof of evidence of Christopher James Tunnell BSc(Hons) M.Phil MRTPI FAcSSfrsa who is the Director of Planning and Planning Group Leader at Arup. He has over 30 years' experience in a broad range of planning matters. His position, after reviewing the proposal on the basis of his particular understanding of what was proposed, was[21]:

"*While the mineral extraction itself is not inappropriate under NPPF paragraph 150, the arguments of developments that are inappropriate are:*

- *The construction and operation of the concrete batching plant. This is not a necessary part of a mineral extraction in NPPF paragraph 150 terms. It is an added value operation that could be located elsewhere.*
- *The extensive and busy on-site haul roads and large stockpiling areas. They are disproportionately large as a consequence specifically of the campaign method of working.*"

24. In the above context, in his planning balance, Mr Tunnell concluded[22]:

"*Undoubtedly both in whole and in part it is inappropriate development in the Green Belt.*"

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[21] See paragraph 162 of his Proof of Evidence

[22] Paragraph 212 of his Proof of Evidence

25. Mr Tunnell had drawn particular attention to the size of the as dug stocking area. However, he proceeded on the basis that the mineral stockpiles would be up to 10 metres above existing ground levels[23]. This was a material error of understanding. The Officer's Report had correctly proceeded on the basis that a limitation on stockpile height would be to 5 metres and provided a condition to that effect.

26. Moreover, the Statement of Common Ground on Operational Matters[24], substantially undermined Mr Tunnell's initial view as to the comparative sizes of plant sites. Still further, the Statement of Common Ground on Hydrogeology confirmed that it was appropriate to work on a campaign basis.

27. Fairly, reasonably and as expert witnesses should, Mr Tunnell changed his position in his evidence in chief. He accepted the campaign method was appropriate, that the stockpile was appropriate in terms of as dug material and that conveyors were unnecessary. They were not an alternative that he was pushing for. His position came down to the remaining processing area being excessive and that it could be reduced in site area. If there was a condition requiring no pumping and the processing area was redesigned, his position would shift in favour of allowing the proposals.

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[23] See paragraph 120 of his Proof of Evidence and further at paragraph 164(7)

[24] ID2

28. In answer to the Appellant's questions, Mr Tunnell confirmed that the proposal, subject to appropriate conditions and obligations, would accord with the Development Plan. Still further, he readily agreed that, with appropriate conditions and obligations, planning permission should be granted having regard to the Development Plan and all other material considerations.

29. What then, was the dispute between the Appellant and the Council? So far as Mr Tunnell's evidence is concerned, it was this:

(i) The southern boundary of the processing plant site did not have a screening bund and so was exposed to areas to which the public had access, to the south;

(ii) The area of the processing plant site was too large;

(iii) The above could be remedied by the imposition of a suitable condition requiring further detail and redesign to accommodate the above two points, notwithstanding what was laid out on Plan HQ3/3.

30. In Green Belt terms, that is what the case came down to.

31. The narrow issue is essentially one of design, which can be addressed by the imposition of an appropriate condition. This position was arrived at after the opportunity to discuss the proposal prior to the submission of the application, in 2015 and at nineteen meetings with various configurations of the Mineral Planning Authority during the course of the next five years. It is not in dispute that the size and design of the plant site was not raised as a matter of concern at

any of those nineteen meetings, nor in any correspondence between the Mineral Planning Authority and the Appellant. Indeed, in 2017, this Mineral Planning Authority resolved to grant planning permission for this very scheme.

32. The only other case mounted against the proposal on Green Belt grounds was that of CHPC, via the carefully drafted and clear proof of evidence of MF Rawlins. Via Mr Rawlins' equally clear oral evidence, the Parish Council's position was explained by reference to viewpoints, mostly around the appeal site, rather than within it.

33. While the visual element is to some degree relevant to assessment of openness, neither Mr Rawlins nor HCC sought to make out any landscape and visual/character and appearance case against the appeal proposal. No point was taken on the lighting assessment[25]. Indeed, HCC expressly agreed via the main Statement of Common Ground[26] that there are no landscape or visual impact issues which would justify a refusal of the proposed development.

34. The "*Country Park*" took on a very prominent role in the Council's case as put to the Appellant's witnesses. I will deal with the case that was put. However, the Inspector is respectfully asked to read Mr Tunnell's proof of evidence so far as it deals with the effect on visual openness[27] because, in the Appellant's submission,

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[25] CD 10.5

[26] CD 8.1 at paragraph 10.2

[27] From page 29 of its Proof of Evidence at paragraph 164 through to 170

it is notable for the absence of reference to what has become a key plank of the case as put. If the Members of the Planning Committee were so anxious for that case to be put, it would have been convenient for it to have at least been mentioned in the reason for refusal, have been emphasised in the Statement of Case and to have been the subject of substantial evidence in the only relevant Proof of Evidence.

35. Contrary to the Council's case, the scheme is a well-designed scheme within an area which the Council has long maintained to be a suitable and sustainable location to meet its mineral needs. The scheme accords with the SPG in that the plant site is appropriately located to the northern end of the site, consistent with the SPG and also Mr Tunnell's evidence, in addition to that of SLR, who designed the scheme, and in particular, Mr Lowden, who was not cross examined about any aspect of the scheme design, save in respect of the size of the plant site and its screening to the south.

36. Even within the plant site, there is no dispute that all of the respective elements are needed and are laid out in a configuration which is logical and necessary. Only the size of the area for the processing plant and associated circulation of vehicles is at issue. Hence, for a substantial and important quarry to contribute to the needs of the county for a period of thirty years, the only issue is in respect of a modest proportion of one aspect of the northern end of the site.

37. It only became clear that the complaint about the size of the plant site focused on the processing area and stockpiles after Mr Tunnell had completed his evidence.

It is, of course, always to be remembered that Mr Tunnell considered that planning permission should be granted, subject to appropriate conditions and obligations. Mr Tunnell did not even contend that the number of product stockpiles was too great. He was content with four such stockpiles, but he thought that they were too big.

38. However, as Mr Mutch explained, this is a misunderstanding. It is essential that such areas include sufficient circulation space for very substantial machinery and separated and segregated circulation space for pedestrians. Such is essential to safe operation and in order to prevent workplace accidents, which Mr Mutch explained had dogged the minerals industry in the past, but was very much improved in modern operations. The same point was put to Mr Tunnell, and he could see the merit in having appropriate circulation space to ensure health and safety.

39. This leaves views into the plant site from the south. Frankly, this is now the sole focus on the Council's case. It was always answered by what was condition 8 appended to the recommendation to grant planning permission in the Officer's Report. Some screening is required and the Appellant has never disputed that. The reality is that this was always a matter which could be addressed by condition and no doubt that was behind the reason for refusal which made no specific reference to this now central feature of the Council's case.

40. While, of course, the LVIA has not been disputed either as to its selection of viewpoints, methodology or its particular assessments, it is plain that the LVIA

makes a fair assessment of the impact of this part of the proposal on the openness of the area, when viewed from public vantage points which would effectively be within the site. This can be seen in:

(i) Paragraphs 8.35 and 8.36 which refer to the design evolution, by way of discussion and consultation and a landscape strategy which positions the plant site to the north away from local residential properties and (third bullet point) the use of a landscape cover around the site perimeter.

(ii) Moreover, paragraph 8.51 expressly acknowledges that Ellenbrook Fields is well-used by local walkers and cyclists for informal recreation and consequently, in terms of landscape value, the LVIA acknowledges a discrete landscape element of recreational value which again makes express reference to Ellenbrook Fields. It is therefore incorrect to assert that the ES did not have regard to and reasonably assess the effect upon Ellenbrook Fields, otherwise known during the course of the Inquiry as the Country Park.

41. It follows from all of the above that very little of Mr Lowden's Proof of Evidence is, in fact, in issue, insofar as it deals with Green Belt openness. He was correct to assess the scheme in the way in which he did and to reach the conclusion that the appeal proposal is not inappropriate development, its effects upon openness are acceptable and that there is no properly founded reason to refuse the proposal on Green Belt grounds.

42. If, contrary to the above submissions, it is concluded that the proposal is inappropriate development in the Green Belt, the Appellant relies upon the eight very special circumstances which are set out by Mr Lowden at his paragraph 3.4, page 28 of his Proof of Evidence.

EFFECTS ON HYDROGEOLOGY AND BROMATE CONTAMINATION

43. HCC has placed a lot of emphasis on pumping/no pumping in its Closing Submissions. Attention is drawn to HCC's Opening Statement[28]. I ask you to compare and contrast those two documents. In the light of the above, four of the parties[29] have been able to agree, in short summary (and reference to the document and full context will be necessary):

(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;

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[28] ID 09

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

(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.

44. Other Rule 6 parties relied upon the evidence of Dr Rivett. You can be confident that the conclusions reached by the four parties I have referred to are to be preferred and that Dr Rivett's concerns have been exhaustively and completely addressed for the following reasons:

(i) The Environment Agency is the specialist regulator in respect of the water environment which now has a long heritage in a specialist study of the groundwater environment, including the groundwater of the London Basin. It has always shown itself ready to raise concerns and to object in the event that there was a risk to public water supply. Its evidence and its position carry great weight as the highly specialist and well-informed view of an independent regulator;

(ii) The Environment Agency did raise proper questions at the outset of the application process, which concerns have been fully resolved;

(iii) The evidence given orally on behalf of the Environment Agency was measured, cogent, considered and not effectively countered. Rather, it was consistent with the evidence of three other hydrogeologists.

(iv) One of those other hydrogeologists also represents a body with an independent interest in groundwater quality and groundwater resource for public water supply: Affinity Water. The statutory water undertaker self-evidently has a very strong interest in ensuring that the bromate contamination is remediated and its effects not exacerbated.

(v) The Statement of Case on behalf of Affinity Water and the oral evidence presented in support of that position on each and all of the issues raised was a masterclass in rational, clear thinking, supported by long-term hydrogeological evidence and an encyclopaedic understanding of groundwater flow in the catchment. Affinity Water's position, explained in accessible detail, was that the Tertiary sand and gravel overlying the chalk aquifer provided only a small degree of storage and transmissivity in the combined aquifer of the chalk and LMH. This was convincing. It was explained having regard to detailed, day-in day-out, experience and understanding of the pumping regime and effects at the Bishops Rise and other boreholes within the catchment.

(vi) Both the Agency and AW drew attention to the history of the investigation of the bromate plume which now extends to some 21 years of study, monitoring and understanding. It is absolutely plain from the materials provided by all parties that the storage, transmission and highest concentrations of bromate are very much focused upon the chalk and not upon the LMH.

(vii) The Inquiry further had the benefit of an independent review of the material supplied in support of the application and of the bromate contamination question in its generality via the evidence of Miss Lightfoot. Her evidence was demonstrably independent and thoughtful, having regard to the way in which she drafted her Proof of Evidence, having become involved in these issues at a late stage, after the drafting of HCC's Statement of Case. There was a lot to get to grips with in an application which had been proceeding on this issue for a period in excess of 5 years. She raised four concerns and sensibly engaged in discussions with other specialists in the case. She then adopted the position set out in the SOCGH and in her further opinion.

(viii) Mr Rowland provided a succinct and clear route into understanding the issues which had been raised by Dr Rivett in section 6 of his Proof of Evidence which sets out the matters raised (a) to (f). Those seven pages of summary repay rereading and when that is done it is striking how thoroughly and consistently Brett has devoted itself to the characterisation of the site, its geology, its hydrogeology and its groundwater chemistry.

(ix) There is then the question of conditions.

45. 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.

46. I now turn to consider those draft conditions[30]. Draft conditions 25 to 31 are agreed as to their effectiveness in avoiding unacceptable effects upon groundwater, and preventing any adverse effect on the bromate plume and/or being effective in detecting any adverse movement in the bromate plume. Those conditions have been the subject of detailed discussion and debate between the specialist witnesses from whom you have heard. They have further been the subject of a further opportunity for discussion in a roundtable hearing session. Subject to comments made in that regard which did not go to the substance of those conditions, they are agreed. Nobody presents you with any substantial alternative condition or conditions.

47. The provision of a GWMMP has been an agreed stance for a period of years and is a strong feature of draft conditions 26 and 27. They ensure that the detail of monitoring locations, sampling, assessment, reporting and stakeholder involvement are fully set out and approved before anything happens on the site and moreover that there is ample opportunity for the GWMMP to be updated and to evolve to respond to whatever circumstances fall to be addressed for each of the remaining six phases. Conditions 28 and 29 provide for appropriate action and response to the results of the monitoring and reporting.

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[30] See ID 49.1

48. Moreover, there is protection of the chalk aquifer both physically by reference to condition 30 and a simple condition which prevents pumping of the LMH. In that latter context, it is evident that there is no physical mechanism available to draw the bromate plume from the northeast towards the southwest, nor to the concentration curves which appear in many plans in the Inquiry materials. The upshot is that all that is left is Dr Rivett's very shortly stated theory that there might be "*transverse diffusion*" of bromate.

49. The upshot is a very well-founded body of evidence and suite of controls which provide a very high degree of confidence as to groundwater protection. In the result, one natural resource can properly be put to use for the economic and social benefits which are advertised in the Mineral Local Plan and national policy, without risk to another natural resource, namely groundwater.

AMENITY AND LIVING CONDITIONS

50. The preliminary list of main issues identifies dust, air quality and health alongside noise and disturbance as matters to which one is to have particular reference under this heading. I deal with each in turn.

51. Dust and air quality are to be distinguished, albeit that they are to some degree overlapping both as to guidance, monitoring and use of conditions. As far as dust is concerned, there is the evidence of Mr Gordon Allison. He concludes,

definitively, that the dust risk assessments in the two Environmental Statements[31] are correct in concluding that disamenity dust deposition would be very much lower than the Environment Agency guidance threshold and the risk associated with disamenity dust is negligible[32].

52. Residents have raised concerns in respect of respirable crystalline silica (RCS). As previously submitted, dust emissions from the quarry will be low having regard to the extraction method being a wet one and control measures being in place to maintain damp materials. The concentrations have been thoroughly considered by Mr Allison by reference to very conservative standards[33] and shown to be of no significant risk. With respect, residents' evidence and concerns are not well-founded. A comprehensive planning condition addressing airborne concentrations of particulate matter (with the offer of an annual summary of monitoring results to be provided to the Liaison Committee to be established) should provide reassurance to the residents that their concerns will continue to be in front of the applicant and the authorities.

53. So far as the normal measures of air quality are concerned (particulate matter and oxides of nitrogen), this has never formed any part of HCC's case, which in any

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[31] Most recently updated in CD 2.2 – the 2021 ES

[32] See his Proof of Evidence at paragraph 21 in which he doubts the Environment Agency M17 guidance threshold of nuisance presented as 200 mg/m^2/day as being sufficiently low to prevent nuisance , but nevertheless concludes that because the rate of deposition will be so much lower than the threshold that the risk associated is small

[33] See the California Office of Environmental Health Hazards Assessment Standards

event has been abandoned so far as it relates to dust effects arising from HGVs. No issue whatsoever arises in this regard.

54. A noise condition has been proposed[34]. Nobody disputes the suitability of the identified potentially sensitive receptors, nor is there any dispute as to the underlying acoustic evidence. In those circumstances, there is no arguable freestanding noise objection.

55. That leaves the question of cumulative effects. Having regard to the results of the assessments in respect of each individual potential effect (noise, air quality, dust, etc), the Environmental Statement was correct to conclude that there was no significant cumulative effect.

OTHER MATTERS

Highway Safety

56. The proposed access has been carefully considered. The 2016 Environmental Statement was supplemented by the transport chapter addendum of August 2016 which responded to requests for further information from HCC as local highways authority[35]. Further consideration was given to the design of the site entrance (to include a right turn lane (ghost island)) and to existing and future traffic levels and to the routing of vehicles on the surrounding highway network. These

[34] Which is consistent with the NPPG and achieves the limits set out.

[35] CD 1.3

additional materials fully satisfied HCC's traffic and transportation engineers. Further, a stage one road safety audit was undertaken by independent consultants and approved.

57. Similar design considerations apply to the site access, per the 2021 application. As has been explained to the Inquiry, both provide for a pedestrian crossing and traffic island along with a right turn lane for vehicles arriving at the site from the northeast. The design evolution is helpfully summarised in the note on highways[36].

58. The effects upon cyclists have been properly assessed.[37]

Flood Risk

59. The uncontested evidence of Ian Walton is that the proposal will give rise to benefits both during operation and upon restoration so far as flood risk is concerned: "*The proposed surface water management strategy will ensure that the flood risk will not be increased elsewhere and will, for larger events, reduce the flood risk downstream of the site*"[38].

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[36] ID 26

[37] A point is taken in a late representation (ID 63) – this is considered and dealt with in the ES – see Section 7 at §§7.74-7.76

[38] See paragraph 2.7 of Mr Walton's Proof of Evidence

PROW

60. The Officer's Report records:

"*The restoration of the site to an appropriate mix of conservation, open space and public access will be compatible with use as a country park in accordance with the original Section 106 agreement for development of the former British Aerospace site*."[39]

61. No part of any reason for refusal, nor the HCC Statement of Case suggests otherwise and so these Closing Submissions proceed on the basis that the Council's position remains unchanged in this regard.

62. There is then the question of effects upon PROW and access during the course of the mineral working. This is evidently an important question which requires a scheme of working which is responsive to this issue. However, it is not a point which is ever capable of a result which provides the public with continued access to active mineral workings. Much of the discussion at the Inquiry failed to have proper regard for the fact that it is the longstanding policy and anticipation of HCC that the preferred site will be worked for its minerals. This is an express acceptance that the working areas will result in effects upon public access. The scheme is therefore drafted on a phased basis which provides for the return of public access upon restoration of each phase. Nobody has put forward an alternative design proposal which is said to be more effective in this regard. This

[39] See CD 1.7 at paragraph 1.18

point therefore comes down to the appropriate planning conditions to strike the right balance between the proper working and restoration of the mineral and its return to public access. That is what the conditions and the planning obligation[40] achieve and nobody contends for an alternative set of conditions in this regard.

Biodiversity

63. The Officer's Report concludes[41]:

"*The short-term impacts of mineral extraction will significantly affect existing habitats including the areas of managed and unmanaged grasslands, however, the creation of new habitat as part of the restoration of the site is likely to produce long term net biodiversity gains with significant new habitat areas including woodland, conservation and grassland areas which will compensate the short-term biodiversity impact during mineral workings. Long term management of the restored site is proposed to be secured via the Landscape Management Document. The proposed restoration would be consistent with the aims of the NPPF and Minerals Policy 9 with regard to long term, overall enhancement of local biodiversity through restoration.*"

64. Neither HCC nor any Rule 6 party seriously raises an ecological or biodiversity issue, though there is some reference to impact on wildlife within third party representations. The Appellant relies upon Chapter 11 of the Environmental Statement which is unchallenged as to its baseline assessment and assessment of

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[40] ID 51.1

[41] CD 1.7 at paragraph 9.98

the operational and post-restoration effects, delivering biodiversity net gain in accordance with the current policy and legislative framework.

Heritage Assets

65. The Cultural Heritage chapter of the 2021 ES (Chapter 12) records that the application site is well screened from all but the nearest Listed Buildings at Popefield Farm by vegetation and built development[42].

66. The effect is indirect and negative of medium magnitude and assessed as not significant[43]. The effect upon the setting of Popefield Farm would be minor adverse during the operational phase with the most sensitive view being that looking to the front of the house, but there would be clear views from the rear elevation, although these would mainly be oblique. However, the effect upon restoration would be a positive medium magnitude of effect, but also not significant because the restoration scheme would enhance the broader landscape setting of Popefield Farm as a complex of Listed Buildings.

67. The upshot is a minor adverse effect during operation and some benefit with restoration.

68. I return to these matters in submissions on the planning balance below.

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[42] See paragraph 2.19 at page 12-5

[43] See Table 12-7 at page 12-22 of Chapter 12 of the 2021 ES

NEED

69. There are four key sources of evidence in this regard:

(i) The appendix to Mr Lowden's Proof of Evidence[44];

(ii) The 2021 Local Aggregates Assessment[45];

(iii) HCC's position at the *Ware* Inquiry;

(iv) The oral evidence of Mr Tunnell.

70. Mr Lowden has demonstrated, graphically, that the available reserves in the county have been in a steady decline from 2010 such that they are acknowledged to be at less than 7 years' supply by 2018. The remaining question is then what one is to do with indications as to what further supply is going to come forward in a deliverable form. In this regard, there is some debate about the Coopers Lane decision to grant planning permission for further sand and gravel extraction at that location. That is subject to a Section 106 Agreement which has yet to be completed.

71. The LAA for 2021 is quite definitive: "*The sand and gravel reserves have decreased in line with sales and the current landbank stands at 5.9 years. This is based on Hertfordshire's revised annual provision rate of 1.31 million tons per*

[44] Appendix D on the topic of need

[45] ID 14

annum. It can supply aggregate for a period of 6.5 years based on the ten year average sales data."

72. This is a highly significant position, recorded by the Mineral Planning Authority and brings into play paragraph 213(f) of the Framework, namely that the MPA should plan for a steady and adequate supply of aggregate by maintaining a landbank of at least 7 years for sand and gravel.

73. It is essential that there is a sufficient supply of minerals to provide the infrastructure, buildings, energy and goods that the country needs[46].

74. Great weight should be given to the benefits of such mineral extraction, including to the economy[47].

75. It was reported to the Secretary of State in the *Ware* decision that the Mineral Planning Authority relied upon this site in order to maintain its landbank[48].

76. The Mineral Planning Authority was definitive in its position that the supply to be provided by the appeal site will occur. Evidently, the appeal site is a very important feature of the forward planning undertaken by the MPA.

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[46] See paragraph 209 of the Framework

[47] See paragraph 211 of the Framework

[48] See paragraph 76 of the Inspector's Report on the *Ware* decision [CD 9.3]

77. Mr Tunnell did not dissent from any of this. As an experienced mineral planner, he was content to agree that there has been a longstanding anticipation and reliance upon the appeal site to meet the county's needs and that the current landbank position demonstrates that it is in fact needed in order to comply with the government's policy in Chapter 17 of the Framework.

OTHER MATTERS

Purpose

78. There are matters which have arisen in the course of the Inquiry which do not fall into a neat category and for which there is not any particular logical sequence which can be adopted. I therefore apologise if these matters appear to be a miscellany of issues.

Application to Amend

79. The Appellant relies upon its letter from Knights Solicitors dated 23rd September 2021[49]; the submissions on amendment which were appended to the Appellant's Opening Statement[50], that being a document first drafted and circulated on 2nd November 2021 and updated to respond to submissions of other parties; the Appellant's Note on Amendment, dated 25th November 2021 [ID50].

80. None of those points are rehearsed further other than to make these simple points:

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[49] CD 10.2

[50] ID 8, from page 22 onwards

(i) All that is required in order to achieve consistency between the offered UU and the plans to be approved is substitution of HQ3/1, 3/2 and 3/3, dated August 2021 and a draft condition which would achieve that has been provided.

(ii) A simple planning condition achieves "*no pumping*";

(iii) A simple planning conditions achieves the standoff;

(iv) Likewise, the minor change to the access arrangement is easily achieved by the substitution of plan reference numbers.

81. During the course of the Inquiry, witnesses have had an opportunity to explain how any of these changes are substantially different from the scheme as submitted in 2016. You have received little or no evidence in that regard and that is because it is self-evident that the changes do not amount to a scheme which is substantially different. The concrete batching plant is self-evidently a severable part of the development and having regard to the position which had not been advertised or previously heralded during the five years of consultation on the application, the Appellant took the pragmatic approach of offering to drop that part of the proposal. The Unilateral Agreement achieves that outcome and can be relied upon as an effective mechanism. It gives complete control in that regard to the Mineral Planning Authority because the Appellant has no prospect of demonstrating that there would be no continued good purpose in maintaining the UU because the planning purpose, namely the strong policy of restraint in respect of the Green Belt, is going to remain in place. That submission, however, is made without prejudice to the Appellant's position that it was always open to the planning authority to issue a split decision and to grant consent, absent the concrete

batching plant, if that was truly the feature of the proposal which had suddenly, after five or six years, caused such offence.

82. Rule 6 Parties, particularly the Parish Council, have continued to argue in closing that only the features of the 2016 application should be determined. With respect, the Parish Council fails to engage with the proper use of planning conditions and obligations, which are key elements of development management. For example, there is no engagement with the simple fact that a 'no pumping' condition is open to any decision maker. The same point applies to the 'stand off'. In truth, the Rule 6 parties take a tactical position at the appeal. They are perfectly entitled to so, but the position needs to be seen for what it is.

83. Given the thrust of HCC's Closing Submissions in this regard (in contrast to what was said, very clearly, during the first morning of the Inquiry), further attention is drawn to §38 NPPF. The Appellant has continued, as it has for years, to work with others. The Appellant hopes that has been clear from the history, the demenour of its witnesses and its general tone throughout.

The Affinity Agreement

84. Reference has been made to the operator's agreement as between Brett and Affinity Water. That is a contractual agreement between those two parties. The Inquiry has not been provided with a copy of that agreement and for that reason no weight should be attached to it because the Inquiry is not aware of what its provisions are. To be clear, the Appellant does not rely upon the fact of that agreement.

Landfill Condition

85. During the course of evidence and in the conditions session, the waste permit has been considered[51].

86. The permit authorises Brett to operate waste operations at the site, subject to its conditions, including condition 2.3 which requires the activities to be undertaken in accordance with the techniques and in accordance with the documentation specified in Schedule 1 to the Permit. Further, condition 2.6 addresses waste acceptance and condition 1.31 requires that the operator shall take appropriate measures to ensure that waste produced by the activities is avoided or reduced, or where waste is produced it is recovered where practicable or otherwise disposed of in a manner which minimises its impact on the environment.

87. The combined effects of that condition and the waste acceptance criteria, which are to be specified and agreed, is to prevent the emplacement of waste which could be recovered.

88. The Appellant's primary submission is that the permit achieves the objective of ensuring that only inert materials which are not otherwise reasonably capable of recycling are emplaced in the landfill void.

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[51] See full document CD 11.6 and the Appellant's Note on Permitting ID 48

89. In the event that the Inspector reaches an alternative view on the proper interpretation of the permit, or is in doubt as to the effect of the permit, then the Appellant agrees to the imposition of a condition in terms such as:

"For the avoidance of doubt, *waste acceptance procedures criteria employed at the site shall include measures to ensure that[, so far as practicable,] deposited on site shall not include material which may reasonably be recovered as recycled aggregate.*"

90. That condition would be included for the avoidance of doubt and would not trespass upon another sphere of regulation.

The 2000 Section 106 Agreement

91. Inconsistently with the Officer's Report, without mention in the reasons for refusal and without significant emphasis in the evidence relied upon from Mr Tunnell, the Mineral Planning Authority has placed very considerable reliance upon the 2000 Section 106 Agreement. This achieved greatest prominence in the startling cross examination of Mr Mutch, an experienced mineral operator and director of the company[52], but not a lawyer specialising in issues of real property. The thrust of that cross examination went to deliverability by reason, it was said, of the inability of the landowner to provide an effective lease to the Appellant.

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[52] GM was managing director of Brett Aggregates Limited (appellant) but is now Director for Strategic Lands and Planning for Robert Brett and Sons Limited (parent company) and a Director in Brett Aggregates Limited.

92. Correctly, that point is no longer pursued as a plank of the Council's case in this Inquiry[53].

DISCUSSION AND CONCLUSIONS

93. Having regard to the above, the starting point has to be the Development Plan. The starting point is agreed and as between the Mineral Planning Authority and the Appellant: there is compliance with the Development Plan. No Rule 6 party has expressly contended otherwise. It could have been put to Mr Lowden that there was a failure to comply with the Development Plan. Nobody did so.

94. The significance of that point is self-evident, the statutory presumption in favour of the Development Plan should prevail unless there is a material consideration which indicates otherwise. In this case, there is an obvious material consideration which stands out from amongst other material considerations, namely national policy in respect of maintaining a steady and adequate supply of aggregates[54], in the context of the most recent assessment of need. This is a county which identifies the application site as its preference for its future supply and expressly states in the MLP that it chose it by reference to sustainability criteria. There is, therefore, the opportunity to meet what now amounts to a pressing need, having

[53] See ID 56 which is the Note from HCC in respect of private law rights

[54] See paragraphs 209 and 213 of the Framework

regard to the steady decline in supply, via a sustainable site which is consistent with the Development Plan.

95. It is not enough merely to draw attention to the need to attach great weight to the benefits of mineral extraction, including for the economy. Any planning decision which has to grapple with either an adverse effect or with a benefit needs to do two things. Firstly, it needs to grapple with the extent or the nature of the adverse effect or of the benefit. Where a proposal supplies affordable housing it is a relatively straightforward thing to do because one knows how many affordable dwellings are being supplied and that gives the decision maker a handle on what the extent of the benefit is. The next question is to decide what weight to give to that particular quantum of benefit.

96. Here, the same sort of consideration applies. The proposal gives rise to a quantified supply, both over the terms of the development and per annum. That can be assessed by reference to the quantified need as expressed in the Local Aggregates Assessment. One is able to gauge, numerically, the extent to which the grant of consent for the appeal proposal would have an impact upon the supply of minerals in the county. That is all about the extent of the benefit. The Appellant' submission is that the benefit would be substantial and that is entirely consistent with what was submitted by the Council at the *Ware Park* Inquiry. It described the release as *"huge"*[55].

[55] See paragraph 76 of the Inspector's Report for the *Ware Park* case at CD9.3

97. To that huge effect on supply is to be applied great weight, consistent with national planning policy. The product of those two considerations is a huge impact on supply, which is present going to meet need, and the great weight to be applied to it is a material consideration of the highest order.

98. One has, therefore, a development compliant scheme which is supplemented by a material consideration of a very substantial moment. What, therefore, might tip the balance the other way?

99. The answer to that is nothing. The only other contenders here have fallen away. The evidence is that the appeal proposal is, subject to appropriate conditions, appropriate development. Further, the evidence is extremely strong and robust that the appeal proposal can be delivered without unacceptable risks to groundwater. For these reasons, the balance of planning considerations falls very clearly in favour of the grant of consent. All other matters are relatively minor in comparison and in any event, have been assessed as having either negligible or only modest effects in the context of minerals development of this type generally.

100. Even if I was wrong in the above submission as to whether or not the proposal is appropriate development, then the VSC balance would fall down very strongly in favour of the grant of consent for precisely the same reasons. There is no "*any other harm*" which would come close to affecting that balance.

101. It is for these summary reasons that the Appellant submits that the evidential position at the close of the Inquiry is crystal clear and the decision is one which

can be made confidently via the straightforward application of the Development Plan Policy, supplemented by Chapter 17 of the Framework, with the conclusion that planning permission should be granted, and that is what the Appellant asks you to do.

Richard Kimblin QC 6th December 2021

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RE: LAND AT HATFIELD

AERODROME

PLANNING APPEAL REFERENCE:

APP/M1900/W/21/3278097

LPA Reference: 5/0394-16

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