Smith Grant
Environmental Consultancy

Town & Country Planning Act 1990
Section 78 Appeals

Proposed Sand and Gravel Quarry, Mytax Farm, 4 Bourbles Lane, Preesall

Rebuttal Proof of Evidence of:

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DUST and AIR QUALITY

On behalf of: Baxter Group Ltd

Planning Inspectorate Reference: APP/6002168

Local Authority Reference: LCC/2023/0030

March 2026

MYTAX FARM, 4 BOURBLES LANE, PREESALL
REBUTTAL PROOF OF EVIDENCE: DUST & AIR QUALITY

For: Baxter Group Ltd

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1. Introduction

1.1. My Rebuttal Evidence considers the Proofs of Evidence provided by:

i) Matthew Edwards – with regards to Dust Amenity;
ii) Richard Sharples – with regards to Planning.

1.2. In order to assist the Inspector this rebuttal evidence has been prepared to provide a review of the issues raised in the formal evidence submitted on behalf of LCC and provide a rebuttal response.

1.3. It should be noted that generally I have not repeated points which I consider are already made clear in my main proof of evidence. Therefore, the fact I have not commented on a particular issue or point made by another witness which contradicts my evidence is not intended to show that I agree with them or that I accept the point.

2. LCC Evidence with regards to Amenity Dust

2.1. I have reviewed the Proof of Evidence provided by Mr Matthew Edwards with regards to dust amenity and have highlighted some key points below.

2.2. Procedural matters

2.2.1. As noted by Mr Edwards in **paragraph 1.15** AtkinsRealis (*formerly Atkins*) was engaged by LCC to provide technical review of the original planning application in relation to air quality. This review (CD2.07-CD2.11) included a review of the original Vibrock AQA (CD1.22) and as noted by Mr Edwards, identified a requirement for further information from the Appellant. This air quality / dust information request was included within the LCC Regulation 25 request (CD3.01). The subsequent Regulation 25 response provided by the Appellant (CD3.02) included section on air quality / dust and was supported by an Updated Vibrock AQA (CD3.06), However, as I note in my proof, it appears for reasons unknown, Atkins did not provide any response on behalf of LCC to the Appellant's Regulation 25 information submission and Updated Vibrock AQA.

2.2.2. Of note however Section 4.1 of the Atkins Technical Review included the statement:

> '*Effective dust control measures can interrupt the pathway between source and receptor, by reducing or removing emissions at source, and disrupting or interrupting the transport of dust emissions offsite'*.

2.2.3. It did not conclude that such effective measures were not possible or recommend refusal due to the proximity of properties and potential adverse effects / loss of amenity due to dust.

2.2.4. In Section 4.1, Overall Conclusions Atkins further noted there was:

> *'… some uncertainty regarding the working methods that will be applied, lack of specification detail on provision of screening bunds, the response went on to conclude that other measures put forward should be made more specific within a DMP, to be submitted to the Minerals Planning Authority for approval prior to commencement of works. It is recommended that preparation of a DMP is secured through a planning condition*.

2.2.5. Again, it did not conclude that such effective measures were not possible or recommend refusal due to the proximity of properties. Indeed, the reference to a DMP to be submitted for the approval of the Minerals Planning Authority and conditioned was a recognition that the issue of dust was capable of being controlled in an acceptable manner and was not the subject matter of an "in principle" objection.

2.3. Item One: Amenity Loss

2.3.1. In **paragraph 5.1.29** Mr Edwards discusses both disamenity and nuisance. However, both private and statutory nuisance are conceptually distinct from planning, which balances competing public interests. There is no actual legal definition that provides a comparison of what may pose a loss of amenity as compared to a statutory or private nuisance.

2.3.2. As noted in my Proof (paragraph 2.4.8) the term 'nuisance' is not referred to in the applicable planning policy (NPPF, NPPW, Joint Lancashire Minerals and Waste Development Plan or the Adopted Wyre Local Plan 2011-2031) or supporting guidance and it is the potential impact on general amenity, or disamenity, that is the relevant issue in the context of the planning regime. Furthermore, in a planning context it is accepted that 'some' level of adverse impact will not be a prohibitive bar to the grant of planning permission, and the relevant policies (including the NPPF, NPPW, Joint Lancashire Minerals and Waste Development Plan and Adopted Wyre Local Plan 2011-2031) therefore typically refer to 'unacceptable' impacts or 'significant' adverse effects.

2.3.3. As detailed in the IAQM guidance on mineral dust (CD12.11) there are no statutory UK standards that define the point when deposited dust causes annoyance or disamenity. Similarly, there is no firm guidance on significance criteria for frequency of disamenity dust episodes.

2.4. Item Two: Application of Assessment Methodology

2.4.1. In paragraphs 5.1.38-5.1.39 Mr Edwards discusses the qualitative risk assessment methodology and proposes alternative findings with regards the magnitude of dust source emissions and pathways effectiveness for some activities. With regards these comments the following can be noted.

Magnitude of Source Emissions

2.4.2. Appendix 4 of the IAQM guidance on mineral dust (CD12.11) sets out examples of residual source emissions magnitude for a number of activities. This is clearly set out to illustrate the factors that may be considered when making *a professional judgement* and is stated in the guidance as not being prescriptive.

2.4.3. Mr Edwards suggests that some magnitude of source emissions have been understated by the Appellant including in relation to site preparation, on-site transportation, mineral processing and restoration, and that a higher category of 'large' should have been applied rather than 'medium' to these. However, in Table 4.1 of the Atkins Technical Review (CD2.07), Atkins recommended that a 'medium' categorisation was appropriate for these and other activities (points 4.6.5-4.6.13 of Table 1 of the Atkins Technical Review). At no stage did Atkins previously advise that any source magnitudes should be considered as 'large'.

2.4.4. These recommended source magnitudes for individual aspects of the proposals were incorporated by Vibrock in the Updated AQA (CD3.06).

2.4.5. However, it must also be noted that Atkins Technical Review further concluded that:

> *'Despite identified inconsistencies and information gaps, the findings of the Vibrock report for Dust Impact Risk, would be unlikely to change as the maximum magnitude (MEDIUM) has been used in the appraisal at Table 12. There are however likely to be additional mitigation measures that require consideration as a result.*'

2.4.6. Hence the focus of the Atkins conclusions was again focused on what additional mitigation measures may require consideration, rather than the conclusions of the assessment itself.

2.4.7. In my proof I have also provided further clarity on aspects of the proposed scheme that potentially affect the source dust emissions and have equally concluded that up to 'medium' categorisation is appropriate.

2.4.8. With regards the specific comments raised by Mr Edwards in **paragraph 5.1.39, point a)**, the following can be noted:

- Site preparation – Mr Edwards suggests that as the site as a whole is over 10 ha preparation should be assigned a 'large' magnitude rather than 'medium'. However, in assessing potential source emissions from site preparation it is entirely appropriate to refer to the 'working area' rather than a total site area. This approach is clearly consistent with the IAQM guidance which depicts the potential dust magnitude of site preparation and restoration being based on the size of the working area, along with other matters that are referred to in the assessment such as height of bunds, material movements, and number of heavy plant moving simultaneously. In relation to all these other factors the proposed preparation would also be 'medium' at most.

- On-site transportation – Mr Edwards notes that there is a maximum internal transportation distance in excess of 500m specifically between in Phase A and Phase 1 and that as such the on-site transportation should be categorised as 'large'. He further considers that the use of unpaved haul roads suggests a 'large' potential dust magnitude. I have discussed on-site haulage in Table 5.1 and in paragraph 5.3.7 of my Proof. Through refence to the examples provided in Appendix 4 of the IAQM guidance (CD12.11), and given the use of compacted aggregate for the internal haul roads and the maximum length being 550m between Phase A and Phase 1 (noting the limited restoration material movement proposed for Phase 1) I have concluded the appropriate categorisation would be 'medium';

- Storage / stockpiles – Mr Edwards notes *'the revised phasing plans (CD3.04) indicate soil storage of up to 10m in the western area of Phase A'*. However, review of the Revised Phasing Plans indicates they do not show topsoil storage to that height in the western part of Phase A. The soil stockpile in the western part of Phase A is up to 3m-3.6m as discussed in the covering Regulation 25 response. The plans do show the as-raised stockpile for Phase A and Phase 1 bund foundation material in the western part of the Phase A as being up to 10m high. This is discussed further in the Proof of Mr Simon Rees. The stockpile is expected to be up to 10m high during Phase A and Phase 1 and will reduce in height as material is processed. It will be replenished during subsequent extraction campaigns although during these subsequent phases the maximum height of the stockpile is expected to be lower due to lower volumes of mineral to be extracted. The potential dust impacts have been further considered in paragraph 5.5.5 of my Proof.

Pathway Effectiveness

2.4.9. In **paragraph 5.1.39, sub-section b)** Mr Edwards suggests that several properties could be affected during any wind direction (i.e. those within 30m of dust sources when considered dust amenity within the entire property boundary) and this should be conservatively assumed to have a 'highly effective' pathway for dust soiling regardless of position relative to prevailing wind direction and frequency. This is stated as being applicable to Bourbles Farm, Ourome, Red Lea, Woodlands, Mytax and New England Cottage. With reference to Table 15: Summary of Dust Effects in the Updated Vibrock AQA (CD3.06) however this approach would only alter the pathway effectiveness as assessed by Vibrock for Ourome and Whinmore Fold, all others having already been assessed as 'highly effective'.

2.4.10. Mr Edwards then further suggests this change to pathway effectiveness would *'in turn raise the estimation of dust impact risk at Ourome and Whinmore Fold to medium impact risk and moderate adverse effect, all other things being equal'.*

2.4.11. This would be the case for 'impact risk' but the assessment of resulting effect also takes into account the receptor sensitivity. With regards to Ourome areas of the property curtilage within 30m of the Site boundary and Phase A would be classed as 'high sensitivity' resulting in a

potential 'moderate adverse' effect if the above approach is adopted. However, with regards Whinmore Fold the areas within 30m of the Site boundary and Phase 1 appear to comprise agricultural buildings and external storage areas, i.e. areas that would not form high sensitive receptors, with the areas of high sensitivity use (property facade, gardens and driveways) being 70m of the Site boundary.

2.4.12. It should also be noted that although the IAQM guidance suggests a worst-case approach of assuming receptors very close to sources would be affected during any wind direction could be made (footnotes 28 and 31, page 22, CD12.11) this is primarily in relation to an approach of considering the 'prevailing wind direction' in an assessment. The guidance does also go on further to state:

> *'A more refined picture of this important factor in the effectiveness of the Pathway term can be obtained by considering the frequency that the receptor is downwind of the dust source. The percentage frequencies of winds blowing from the sources to the relevant receptors can be calculated from suitable meteorological data'*.

2.4.13. It is this more detailed latter approach that is set out in the example in Appendix 3 of the IAQM guidance and utilised by Vibrock.

Receptor Sensitivity

2.4.14. Mr Edwards notes in **paragraph 5.1.39 sub-section c)** that it:

> '… *would appear that measurements have been to the façades of identified properties rather than considering all areas within the curtilage of a property where residents would expect to enjoy high level of amenity'*.

Having reviewed the distances provided in the Updated Vibrock AQA (CD3.06) and replicated as Table 1 in Mr Edwards proof, I conclude that the majority of the distances quoted do represent minimum distances of the proposed working areas to areas within curtilages of a property where a high level of amenity would be expected as opposed to the facades. As noted in his **paragraph 5.1.19 sub-section c)** Crossing Cottage and Greenacres are not described as being within 100m of the proposed development although there are areas within the curtilages of Crossing Cottage and Greenacres that fall within 100m of the proposed working areas and if they form 'tended private gardens or where cars would be parked' that would also be considered as areas where residents would expect high levels of amenity.

2.4.15. In my Proof I have explored this in more detail, providing a sensitivity assessment of these additional areas, along with reinforcing the fact that any assessed receptor may represent a number of receptors.

2.5. Item Three: Application of Mitigation

Overall Mitigation Measures

2.5.1. Mr Edwards observes in **paragraph 5.1.46** that:

> *'… the proposed mitigation measures presented are not therefore sufficient for management of large magnitude emission sources such that dust effects at identified receptors could be manged so as to not be significant'*.

In **paragraph 5.1.47** this is further expanded on as:

> '*This includes […] management aspects including no requirement for receptor or boundary monitoring and no restriction on operations in conditions conclusive to maximum effects or on receipt of a complaint'*.

2.5.2. However, the outline mitigation measures provided in Section 8 of the Updated Vibrock AQA include for regular visual inspections and maintenance of a complaints log. In addition, **paragraph 8.10** of the Updated Vibrock AQA (CD3.06) clearly states:

> '*In the event of a failure of dust mitigation measures, for example in extreme weather conditions, the dust generating activity will be temporarily suspended, until appropriate dust mitigation is implemented or until change in weather condition occurs'*.

2.5.3. Hence this clearly includes for 'the *restriction on operations in conditions conclusive to maximum effects or on receipt of a complaint'.*

2.5.4. He further goes on to observe in **paragraph 5.1.48** that:

> '*… this is not to say there could be theoretical enhancements to mitigation that could further aid in effective control of dust emissions, but that is not what the Applicant / Appellant has presented'*.

2.5.5. However, Mr Edwards has not provided any detail on additional mitigation that could be considered. The Updated Vibrock AQA (CD3.06) again clearly states in **paragraph 8.11** that it is recommended that, prior to the commencement of operations at the site, a dust management plan should be prepared and submitted to the Mineral Planning Authority for approval. As noted in the Updated Vibrock AQA this could be secured by condition if planning permission is permitted.

2.5.6. The submission and agreement if such a DMP is consistent with the original advice provided by Atkins to LCC (CD2.07) on review of the original Vibrock AQA, and that provided by the LCC Director of Public Health (CD2.15). Furthermore, this is consistent with the draft Conditions that have been drafted between LCC and the Appellant, with draft Condition 24 requiring the submission and approval of a DMP prior to commencement of soil stripping works. The draft Condition also sets out some matters which should be agreed in the DMP and includes:

> *''for suspension of site activities where mitigation measures are not effective in preventing dust emissions from the site.'*

2.5.7. A draft DMP has also now been submitted as an appendix with my proof (Appendix KEH11). This document sets out in more detail proposed dust mitigation measures, building on the outline measures set out in the Updated Vibrock AQA, and it is proposed this would be subject to review and agreement with LCC should planning permission be granted. This draft DMP includes for dust deposition monitoring during the operations.

Stand-Off Distances

2.5.8. In **paragraph 5.1.50** Mr Edwards discusses 'stand-off' distances as discussed in the 'MPS2' guidance. It should be noted however that this is referring to the former Mineral Planning Statement 2: Controlling and Mitigating the Environmental Effects of Mineral Extraction in England: Annex 2 Dust issued in 2005. Although this document includes useful information, for example in relation to nature and sources of dust and methods for reducing and controlling dust, it has since been superseded as formal guidance documentation by the current Planning Practice Guidance on Minerals (PPG-Minerals; CD12.05).

2.5.9. Paragraph 15 of PPG-Minerals states:

> ***How should mineral operators seek to minimise the impact of development upon properties and the local environment in close proximity to mineral workings?***
> *Minerals operators should look to agree a programme of work with the mineral planning authority which takes into account, as far as is practicable, the potential impacts on the local community and local environment (including wildlife), the proximity to occupied properties, and legitimate operational considerations over the expected duration of operations.*

2.5.10. Further guidance is provided in paragraph 18 of PPG-Minerals:

> ***Are separation distances / buffer zones appropriate?***
> *Separation distances / buffer zones may be appropriate in specific circumstances where it is clear that, based on site specific assessments and other forms of mitigation measures (such as working scheme design and landscaping) a certain distance is required between the boundary of the minerals extraction area and occupied residential property.*
>
> *Any proposed separation distance should be established on a site-specific basis and should be effective, properly justified, and reasonable. It should take into account:*
> • *the nature of the mineral extraction activity;*

- *the need to avoid undue sterilisation of mineral resources,*
- *location and topography;*
- *the characteristics of the various environmental effects likely to arise; and*
- *the various mitigation measures that can be applied.*

2.5.11. Hence, it is clear that specific standoff distances to minerals developments are not provided in the statutory guidance and that any proposals should be subject to a site-specific assessment. In relation to dust the key stages of such an assessment are set out in paragraph 023 of the PPG-Minerals, and as set out in both the Updated Vibrock AQA and my Proof.

Additional Specific Considerations

2.5.12. In **paragraph 5.1.39 sub-section e)** Mr Edwards makes some specific comments about mitigation proposals. The following further comments can be made:

- Screening bunds – as noted by Mr Edwards the Updated Vibrock AQA (paragraph 4.6.2) makes reference to screening bunds of 3m-5m high in relation to source of dust i.e. during bund construction. Further specific detail is not provided in the AQA and only a plan of Phase A is included in the Appendices to the AQA. However, Section 5: Dust Assessment of the AQA provides commentary on the locations of screening bunds in other phases in relation to each assessed receptor indicating the information as presented in the Planning Statement and accompanying plans was taken into account in the Updated Vibrock AQA. Details of the proposed scheme, including phasing and methods of working, are also discussed in more detail in my Proof;

- Mr Edwards notes that the proposed bund along Bourbles Lane does not extend east to afford protection for the full property at Woodlands including the garden area. However, as noted in Dr Robert Storey's Proof of Evidence on noise (CDx.x) amendments have since been proposed to some of the proposed bunds. This includes extending the northern bund to Phase 1 eastwards and increasing the heights to those in Phase 1 and Phase 4, to provide further noise mitigation to Woodlands, Red Lea and Bourbles Farm during the mineral extraction and restoration activities in those phases. In addition, temporary barriers are proposed during the bund construction works in Phase 1 and Phase 2 to provide further noise mitigation to Woodlands, Red Lea and Bourbles Farm. Full details are provided in the plans appended to the Proof of Mr Simon Rees (CDx.x). These measures will equally serve to provide additional screening with regards to dust to these properties.

Overall Mitigation Conclusions

2.5.13. In paragraph 1.1.2 Mr Edwards states:

> '*My evidence will further present that mitigation measures proposed by the Appellant cannot adequately reduce dust emissions so that no significant effect is experienced beyond the site boundary*.

2.5.14. However, other than citing distances between the proposed activities and receptors, no such evidence has been produced.

3. LCC Evidence with regards to Planning

3.1. Impacts in relation to Amenity

3.1.1. In **paragraph 9.22** Mr Sharples makes reference to a previous appeal decision relating to a sand and gravel extraction proposal at Ware Park in Hertfordshire (CD8.02). Mr Sharples notes that:

> 'Whilst the Inspector did not find fundamental issues in relation to dust impacts, in paragraph 397 he comments that *'visible dust and the heavier airborne emissions from the operation would settle out quickly and so would largely be contained within the site or by the vegetated bunds around the excavated area''*.

3.1.2. However, Mr Sharples fails to note that in that same paragraph 397 of the appeal decision the Inspector further states

> '*Measures that could be included in an approved dust management plan were discussed at the Inquiry. Properly implemented, these would ensure that dust leaving the site would not put existing development at an unacceptable risk from the larger airborne emissions from the minerals operation. This is a matter that could be adequately addressed by the imposition of a planning condition*.'

3.1.3. The Inspector concludes on dust issues at paragraph 402:

> '*I consider that dust could be controlled by condition'.*