

MYTAX FARM, 4 BOURBLES LANE, POULTON-LE-FYLDE, FY6 0PE

**THE EXTRACTION AND PROCESSING OF SAND AND GRAVEL INCLUDING THE
CONSTRUCTION OF NEW SITE ACCESS ROADS, LANDSCAPING AND SCREENING BUNDS,
MINERALS WASHING PLANT AND OTHER ASSOCIATED INFRASTRUCTURE WITH
RESTORATION TO LEISURE END-USES, AGRICULTURAL LAND AND BIODIVERSITY
ENHANCEMENT, USING IMPORTED INERT FILL**

OPENING ON BEHALF OF LPA

Introduction

1. This is the appeal of Baxter Group Limited against the decision of Lancashire County Council to refuse planning permission for a quarry development at Bourbles Lane, Preesall, Lancashire ('the Appeal Scheme').
2. An agreed description of the appeal site, environs and phases of the proposed quarry development are set out in the GSoCG.

The Description of Development

3. The development proposed under the Appeal Scheme is a sand and gravel quarry with associated items of development. The proposal is for the extraction of approximately 500,000 tonnes of sand and gravel with restoration of the site using imported inert backfill materials.
4. Given this permission does not itself grant permission for the holiday lodge development proposed as a final use, the LPA considers that the words "to leisure end

uses” in the description of development is legally meaningless and liable to cause confusion. One option would be to therefore simply delete these words.

The Scheme and Plans to be Approved

5. The Appeal Scheme has evolved from the scheme originally proposed in the planning application. It seems that bunds have been extended in length and increased in height and fencing has been introduced. The Appellant’s proofs of evidence reflect these changes, and a new suite of plans are appended to Mr Rees’ PoE.
6. The plans condition that captures the plans to be approved referred to the old application plans (and still does at the point of drafting this opening despite approaches to the Appellant about this very issue). The Regulation 25 response revised plans (CD3.03- CD3.04) are the ‘old plans’. The Regulation 25 response to PINS contains no reference to revised plans. The Appellant’s Statement of Case was never amended to make clear that an evolved scheme was proposed. The GSoCG was not progressed or signed on the basis of a new suite of plans but makes reference to the application plans/ Reg 25 plans. Consequently, the LPA’s evidence was prepared on the basis of the application scheme.
7. There has been no formal written clarification or Wheatcroft application from the Appellant as to which plans are to be treated as ‘superseded’ and which are to be treated as governing the appeal scheme.
8. Dr Storey produced a technical note on noise calculations for his client (CD12.23). At the very end of that note is a series of suggested scheme amendments under the subheading ‘Other Matters’. Not all of these amendments seem to have been taken forward. Dr Storey may advise his client on noise calculations as he deems fit. The point of interest is the decision (or lack thereof) from the Appellant regarding the Scheme to advance through this appeal and clear communication of that decision. An internal note on noise calculations with reference at the end to possible amendments addressed to a client is not a concrete commitment from the Appellant to an amended

Scheme with an accompanying suite of updated plans/ documents. Nobody reviewing the CD website could sensibly view it thus.

9. It is assumed that the SR plans are proposed for condition and if so the plans condition needs amendment. Similarly, it is assumed that the SCP highway plans are now the appropriate highways plans (and not Plan PA23-7 v3 Site Access). If so, this needs confirmation.
10. These points require urgent clarification at the outset of the Inquiry, so all parties are clear which scheme is advanced for approval, and which plans govern the application, and which plans are to be disregarded as superseded. It would be helpful to have an accurate list of the changes made to the Scheme under the new plans.
11. In view of these changes, it is for the Appellant to satisfy the inquiry that the amendments (once clarified) should be accepted based on the principles set out in *Holborn Studios Ltd. v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)*.
12. Given the capacity of the amended scheme to reduce the technical points in dispute (a point now seemingly agreed) and new or amended physical items of development (bunds, fences), it could readily be said that the proposed amendment involves a “substantial difference” to the application. In procedural terms, the amended scheme has not been the subject of dedicated re-consultation and was only advanced in concrete terms through the Appellant’s proofs of evidence and specifically the plans appended to SR PoE¹. It is important to note the involvement of a R6 party and substantial local interest in this case, third party involvement being particularly relevant to the need for clarity, consultation and procedural fairness.
13. Overall, the LPA would prefer a scheme that is more successful in addressing dust and noise concerns. That is appropriate and consistent with managing land use in the public interest. However, the LPA is aggrieved by the way the appeal process has been

¹ The PINS Guidance at 16.5 advises that “any proposed amendments should be submitted at the outset of the appeal, so as not to compromise the efficient running of the appeal”.

used to evolve the scheme and the lack of clear communication from the Appellant about their intentions at appeal. The LPA has effectively had a 'false start' in the preparation of its evidence in speaking to a scheme that the Appellant seemingly no longer wishes to pursue despite the Appellant advising through the plans condition and GSoCG that the old plans were the relevant plans.

Case for the LPA

14. The case for the LPA is simple. The two reasons for refusal are maintained:
 1. The development would have unacceptable impacts on highway safety which cannot be adequately mitigated and the development therefore conflicts with paragraph 116 of the National Planning Policy Framework, policy DM2 of the Lancashire Minerals and Waste Local Plan and Policy CDMP6 of the Wyre Local Plan.
 2. The development by reason of proximity to residential properties would have unacceptable noise and dust impacts that could not be satisfactorily mitigated contrary to paragraph 198 of the National Planning Policy Framework, Policy DM2 of the Lancashire Minerals and Waste Local Plan and Policy CDMP1 of the Wyre Local Plan.
15. On the basis that the amended plans are now to be the conditioned scheme plans and that the proposal is as set out in the proofs of evidence rather than in the original planning application, technical noise and dust matters of dispute have reduced considerably.
16. In terms of noise, LCC's position is that the technical inadequacies pertaining to document CD3.05 have been broadly addressed in Dr Storey's recommendations for noise mitigation (presented through his proof of evidence).
17. One technical issue of dispute remains: noise from temporary works; namely those immediately to the south of Woodlands in Phase 1. No evidence has been presented to demonstrate how the normal 50 dBA limit could be achieved with closed boarded fencing, as now proposed under the Appeal Scheme as amended. There is no policy basis for accepting noise exceedance during this phase 1 extraction work.

18. In general terms, local residents will experience an increase in noise level and a move away from anonymous or varied sources of noise to dedicated quarry noise.
19. In terms of dust, LCC's position is that the technical inadequacies pertaining to document CD3.06 have been addressed in Dr Hawkins entirely revised assessment which more reasonably represents the likely dust impacts associated with the proposed development. 'Slight' to 'moderate' dust disamenity effects may be experienced at off-site receptors, with the greatest effects associated with short term site preparation activities, including soil stripping, initial cut and fill operations prior to and during construction of screening bunds.
20. The Appeal Scheme is atypical for a quarry development of this type in that residences will be within the at-risk zone for disamenity dust (commonly understood as a distance of 100m). Further, it is not possible to confirm the effectiveness of proposed mitigation measures, only that their application will be a proportionate reaction to minimise effects. The assumption is not that mitigation will resolve all residual effects.
21. The Appeal Scheme will have adverse dust and noise effects to be weighed in the planning balance. There will be an adverse effect on the living conditions of residents and on their amenity as they become residents adjacent to a busy working quarry rather than a rural agricultural area.
22. In highways terms there are several live issues.
23. In terms of the provision of a safe and suitable access, the LPA position is that visibility splays of 2.4m x 52m should be provided (based on the recorded 85th percentile speeds along Lancaster Road and an allowance for wet weather conditions). It is acknowledged that the latest SCP technical drawing² shows that these can be achieved but only if the hedgerow immediately to the west of the access is maintained to a minimum of 1m high. The evidence indicates that this hedgerow is in third party ownership. Thus, the access is not deliverable within adopted highway.

² SCP drawing number 260086-D05 (Appendix JRB7).

24. Lancaster Road and the A588 are not suitable to support the addition of significant HGV movements. The highway is not sufficient in width to support two-way HGV movements on Lancaster Road and the A588. The proposal will increase conflicts. HGVs will be required to reverse on the live network to allow other HGVs to pass. The proposal will also make matters materially worse for pedestrians, cyclists, and equestrians using Lancaster Road.
25. The Appellant's proposed mitigation to deal with these issues is inadequate.
26. Whilst not accepting that widening works to Lancaster Road are required, Mr Budd nonetheless proposes a new widening scheme³ to widen only the southern extent of Lancaster Road near the Vine house bend. However, the problem of third party ownership also arises in relation to this new proposal, which requires the removal of approximately 60m of privately owned hedgerow.
27. Suggested mitigation by way of 'driver behaviour' (folding wing mirrors and relying on driver skill to manoeuvre past each other) is simply unsafe and not an answer to the issue.
28. Mitigation in the form of signs along Lancaster Road and the A588 cannot be safely located in highway to avoid vehicle strikes and cannot be placed in private land without consent. The signs are not deliverable and do not mitigate the identified risks.
29. The need for sand and gravel is acknowledged. However, in view of the identified harms, need is not determinative in this case. In any event, the proposal's contribution to aggregate supply is limited by its small potential output and its remote location.
30. Finally, the LPA notes outstanding matters in relation to SHRA and the consultation responses of Natural England. A further submission on SHRA matters (a detailed document of some 60+ pages) was provided on 10th April 2026 just before the inquiry was due to open. The LPA reserves its position until it has reviewed that submission.

³ shown on SCP drawing SCP/260086/D04 (Appendix JRB14).

Until Natural England advise to the contrary, their position as expert statutory consultee (expressed through two consultation responses) remains that insufficient information had been provided with respect to various ecological matters and an SHRA was required. Natural England's views as the appropriate statutory nature conservation body under the habitat Regulations carry great weight and cogent and compelling reasons are required to depart from those views⁴. The consultation response is therefore a matter for the planning balance. To fail to take account of the NE response in the planning balance would be an error of law. The Appellant's decision to neglect to address the comments of a statutory consultee until very late in the appeal process is not the fault of the LPA. The Appellant's own SHRA now concludes that an Appropriate Assessment is required. Granting planning permission without ascertaining whether there would be an adverse effect on the integrity of the site would be unlawful. The suggestion therefore that this is all somehow the LPA's fault is even more baffling. The Appellant has pursued this application and now this appeal. It is for the Appellant to make their case and ensure that their scheme is clear and meets the relevant legal requirements.

Conclusion

31. For all these reasons, the LPA anticipates inviting dismissal of this appeal at the close of the Inquiry.

Constanze Bell
Kings Chambers
Leeds, Manchester, Birmingham

13th April 2026

⁴ The *Hart* principle (sometimes called the *Prideaux* or *Shadwell* principle). Natural England is the 'appropriate nature conservation body' under the regulations. Its views on issues relating to nature conservation deserve great weight. An authority may sensibly rely on those views. It is not bound to agree with them, but it would need cogent and compelling reasons for departing from them (see, for example, the judgment of Sullivan J, as he then was, in *R. (on the application of Hart DC) v Secretary of State for Communities and Local Government* [2008] EWHC 1204 (Admin); (2008) 2 P. & C.R. 16 at [49]), and the judgment of Owen J in *R. (on the application of Akester) v Department for the Environment, Food and Rural Affairs* [2010] Env. L.R. 33 at [112]).

Appendix One

List of Appearances:

Noise: David Gray BSc (Hons) MIOA, Principal Acoustician at AtkinsRéalis

Dust: Matthew Edwards BSc (Hons) MSc MIEEnvSc MIAQM CSci, Associate in the Air Quality and Emissions Team in AtkinsRéalis

Highways: Ryan Derbyshire BSc (Hons) MSc MCIHT, Team Lead for Wyre, Fylde and Chorley in the Highways Development Control Team of Lancashire County Council

Planning/ Need: Richard Staples BSc MA PGDip, Principal Planning Officer in the Environment and Regulatory division of Lancashire County Council