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 MIXED GRASSLAND, ARABLE/PASTURE FARMLAND AND BIODIVERSITY ENHANCEMENT, USING IMPORTED INERT FILL

CLOSING ON BEHALF OF LPA

Introduction

1. This is the LPA's closing statement with respect to the inquiry into 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').

The Description of Development

2. A revised description of development is now agreed, the erroneous reference to 'leisure use' has been removed (**ID22**). The conceptual restoration plan has been updated accordingly (plan 27, **ID17**).

The Scheme and Plans to be Approved

3. As noted in Opening, the Appeal Scheme has evolved from the scheme originally proposed in the planning application. A new suite of plans is now agreed to capture the Appeal Scheme (**ID17**).

4. The changes are as follows[1]:

Increase in bund heights

Phase 1 Woodlands – increase of even 0.1m to a height of 10.1m AOD

Phase 1 – Red Lea Kennels - An increase of even 0.2 metres to a height of 9.7 metres AOD

Phase 4 – Bourbles Farm – An increase of 1.5 metres to a height of 11 metres AOD

Increase in bund length

Phase 1 Woodland bund increases by approx. 30m to cover full extent of Woodlands garden

Implementation of bunding

Bunding to north of phase 4 implemented earlier in phase 2 not phase 3

Acoustic Fencing

Approx. 3.8m acoustic fencing to be placed in three locations:

Phase 1 Red Lea Kennels

Phase 1 Woodlands

Phase 3b between the gap in bunding between Mytax/ New England Cottage

It is of note that plan BQ26-1 Proposed Solid Boundary Fencing (14/04/26) (plan 28 in **ID17**) seems to show 4 fences, not three.

No widening to Lancaster Road

The widening works offered with respect to Lancaster Road are now withdrawn, despite these works forming part of the TS and Updated TS prepared by JLA

Reduced visibility splays

Despite a 'resting position' of offering LCC's visibility displays (as captured in JRB7 under the title "Proposed Visibility Splays"), the Appellant has now offered two

[1] Some but not all of these changes are described in Dr Storey's technical note on noise calculations addressed to his client (**CD12.23**).

different visibility splays in the alternative in the form of a technical note presented in EIC in the form of **ID34**).

5. Without prejudice to the case for refusal, the LPA would prefer a scheme that is more successful in addressing dust and noise concerns, this being appropriate and consistent with managing land use in the public interest. However, the LPA is aggrieved by the lack of clear communication from the Appellant about their intentions at appeal and the slow evolution of the Scheme on appeal away from the Application Scheme. With the exception of the increase to the phase 1 bund in length/height (see Appendix to LT R PoE), none of these changes are supported by updated assessments in landscape terms and there is no daylight/ sunlight assessment with respect to the close boarded fences of approximately one storey in height. LT's answer to this in XX was bizarre, seeking to blame the LPA for not advising the Appellant of the need to properly assess their scheme. A response that is all the more confusing since the Appellant only clarified the position with respect to acoustic fences and other matters once the inquiry was actually in session.

Case for the LPA

6. When examining SR's revised plans or indeed the previous plans, you cannot fail to be struck by the location of what is proposed – a working quarry cheek by jowl with residential dwellings. There is no attempt to set back ***any*** of the working areas to accommodate the intrusion on local peoples' lives (despite the Appellant's own expert making recommendations in this respect[2]), instead the governing principle has been profit, and maximising extraction. To approve this proposal would give the planning system a bad name. Nobody could seriously plan to put a quarry next to people's homes or think that those two land uses were in some way compatible[3]. Consent is a truly perverse outcome. As RS explained in EIC: "*yes minerals can only be worked where we find them but that does not mean they must be worked wherever we find them*".

[2] CD 12.23, Dr Storey's advice regarding set back distances.
[3] Noting the mandatory language of CDMP1 "Will be compatible with adjacent existing uses". See also DM2 "account will be taken of neighbouring land uses".

7. The case for the LPA in closing is simple. Planning permission was rightly refused on application and should be refused on appeal. 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.

Noise

8. In terms of noise, LCC's position is that the original and updated noise assessments (CD3.05) prepared by the applicant for the original application included a number of flaws, principally relating to the setting of inappropriate noise limits; and insufficient consideration of mitigation. Many of the technical issues identified have been accepted by Dr Storey, who has provided additional recommendations in the form of amendments to bunds and acoustic fence provision and suggested a noise management plan (DG EIC and Rebuttal PoE).

9. The Appeal Site lies within a notably quiet rural setting, characterised by low ambient and background noise levels, which is relatively uncommon (DG EIC and confirmed by Dr S in XX). By way of illustration, measurements at Woodlands average sound levels (reflecting all sources and often influenced by road traffic) in the range of 45–50 dB, with a representative value of 47 dB. Background sound levels, typically defined by the level exceeded for 90% of the time, are generally around 40 dB (DG EIC).

10. Item Three of DG's PoE (paragraph 4.1.14) assessed the anticipated change in noise associated with the quarry and concluded that the original proposals would result in a large, or major, magnitude of change. This position remains unchanged under the

current scheme. A proposed limit of 50 dB LAeq,1h would still give rise to an increase exceeding 5 dB, which falls within the same category of impact. This outcome is closely linked to the site's acoustic conditions, where, as noted above, background and average noise levels are closely aligned.

11. Background sound levels may be regarded as a 'typical minimum' (DG EIC). By contrast, average noise levels reflect the overall acoustic environment and are influenced more strongly by intermittent higher-level events (DG EIC). For the purposes of assessing noise effects, the average level is the more relevant metric.

12. In many environments, background levels provide a degree of headroom, such that the introduction of a new noise source does not materially affect the overall noise climate, even where it exceeds the background by up to 10 dB. This is because average levels are often already significantly higher (frequently by more than 10 dB, and sometimes by as much as 20 dB) due to the presence of other sources such as road traffic, railways, or industrial activity.

13. Under those conditions, additional noise from a development such as a quarry would not typically dominate but would instead sit within the existing range of sound levels, resulting in limited perceptible change. Even relatively light traffic flows, for example one or two vehicles per minute, can elevate average noise levels above 50 dBA while leaving background levels largely unaffected, thereby reducing the relative impact of any new source.

14. At the Appeal Site, however, there are no such prevailing influences to elevate the average noise climate. Consequently, the proposed quarry would become the principal source of noise (DG EIC and Dr S in XX). With an existing average level of approximately 47 dB LAeq,1h, any increase beyond this would represent at least a moderate change, while levels approaching 50 dB LAeq,1h would constitute a large or major increase.

15. In addition, the combined noise environment would exceed 50 dB LAeq,1h, a level commonly associated with the maintenance of good acoustic conditions. Surpassing

this threshold indicates that such conditions would no longer be achieved, and it is likely that occupants would need to keep windows closed to maintain acceptable indoor environments, with consequent implications for quality of life (DG EIC).

16. Relevant policy and guidance, including the Noise Policy Statement for England, the National Planning Policy Framework, Planning Practice Guidance Noise and Planning Practice Guidance Minerals, require that both the scale of change and the resulting noise levels are considered in context. In a quiet rural location, a sustained increase of more than 5 dB, leading to daytime levels in the order of 50–55 dBA, would be clearly perceptible, likely to become the dominant feature of the sound environment, and capable of materially affecting residential amenity. Such effects are appropriately regarded as significant adverse effects, rather than minor or merely noticeable changes.

17. The noise exposure hierarchy provides examples of responses associated with this level of impact, including the need to avoid certain activities during periods of intrusion, reliance on closed windows for much of the time, and a diminished quality of life arising from a change in the character of the area. In this case, the prevailing relatively quiet rural noise would be replaced by quarry-related sounds, including engine noise, tonal elements, intermittency, and plant movement.

18. These outcomes are considered likely to arise from the proposed development. The resulting noise would be both noticeable and intrusive, and would therefore impact considerably on amenity. PPG requires MPAs to consider the prevailing acoustic environment and consider whether or not noise from proposed operations would enable a good standard of amenity to be achieved (PPG 020, **CD12.04**). RS's planning judgment, in circumstances where residents cannot open windows, use gardens, hang washing outside or walk the in the local area a good standard of amenity has not been achieved. The Appellants have consistently conflated the question of compliance with technical standards with the provision of a 'a good standard of amenity'. The PPG is clear that this is an additional consideration ('and') not a consideration in the alternative or a consideration which is the same as considering SOAEL or LOAEL.

19. In practical terms, this indicates that, if the Appeal Scheme were permitted, local residents would experience not only an increase in overall noise levels but also a shift in character, from varied and intermittent sources to a more consistent and identifiable quarry-related noise (DG EIC). If allowed, the quarry will become the dominant noise source in the area (DG EIC, RS XX).

20. One technical issue of dispute remains: noise from temporary works; namely those immediately to the south of Woodlands in Phase 1. There is doubt concerning 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.

21. In relation to the initial excavation works beneath the proposed bund locations close to nearby properties, principally 'Woodlands', the original application classified these activities as temporary works and therefore subject to a higher temporary noise limit (70db). However, the intention of applying a higher limit to temporary works is to account for activities such as the construction of the bund itself, which would provide a degree of noise attenuation for subsequent operations. It is not intended to apply to excavation works, as was originally proposed.

22. Dr Storey concurs with this interpretation and has subsequently recommended that temporary noise barriers be constructed in advance of excavation works at the bund locations (RS EIC/ DG EIC). These barriers would also provide mitigation during the construction of the bunds, and this approach is supported from a noise concern perspective (DG EIC).

23. Notwithstanding this, Dr Storey has indicated that noise levels arising from the excavation works would comply with the proposed 50 dB limit when the barrier is in place. However, based on DG's calculations, there is real doubt about achieving compliance in the real world (**ID13**). The effectiveness of noise barriers is dependent on several factors, including their relative height compared to both the source and receptor, their ability to break the line of sight, and their proximity to the noise source.

24. Information provided by Mr Simon Rees (16/03/2026) and Dr Storey indicates that the proposed barrier would be approximately 3.75 m in height and located around 12 m from 'Woodlands' (as illustrated in Figure 1 of DG's additional note, **ID13**).

25. DG has undertaken calculations using the proposed layout and plant data in accordance with the methodology set out in BS 5228-1. The assessment applies the more detailed screening calculation described in Figure F.3 of the standard, rather than relying on the simplified assumption of a 10 dB reduction where line of sight is obscured. This allows for a more refined estimate of attenuation based on path difference over varying distances. The results of this assessment are presented in Figure 2 of DG's EIC Note (**ID13**).

26. The calculations indicated that the 50 dB limit would be exceeded within approximately 35 m of 'Woodlands', with predicted noise levels reaching approximately 54 dB LAeq,1h. The initial excavation works beneath the bund are located at distances of approximately 17.5 m to 33.5 m from 'Woodlands', considering the corrected chainage. Allowing for additional stand-off distance associated with plant operation, it is evident that the 50 dB LAeq,1h limit would be exceeded at 'Woodlands' based on the information provided.

27. Accordingly, it has not been adequately demonstrated that the 50 dB LAeq,1h limit proposed by PPG Minerals would be achieved. Any exceedance of this limit would be contrary to the relevant guidance and would give rise to a potentially significant adverse effect on residential amenity, having regard to the magnitude of change in noise levels, the absolute noise levels experienced, and the character of the noise.

28. Dr Storey's answer to this issue (**ID15**) is inadequate. He has assumed an excavator with a longer reach (10m) despite also assuming quieter plant, which tend to be smaller in size. Working north to south would help Woodlands but perhaps not Red Lea Kennels. There is no draft NMP or commitment under conditions by the Appellant to secure any of these further mitigations. Even with these assumptions he is 'right on' 50db, possibly at 50.2 unrounded (RS XX). The suggestion of additional noise monitoring at Woodlands creates in effect a setback distance (DG EIC) because where

breach occurs quieter plant and other methods are already being employed. Thus, all that is left as a noise limiting measure is setback (DG EIC). This rather underlies the point: the Appellant has treated maximum extraction as the governing principle and has failed to avoid or minimise (in line with PPG advice, DG EIC) or to have due regard to ensuring a good standard of amenity. The Appellant's reliance on 'worst case' is no answer to this: robustness requires a reasonable worst case assessment.

Dust

29. In terms of dust, LCC's position is that the technical inadequacies pertaining to document **CD3.06** have been addressed in Ms Hawkins entirely revised assessment which more reasonably represents the likely dust impacts associated with the proposed development.

30. 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 [see IAQM Guidance at Box 2, p.12, **CD12.11**]). For example, *Environmental Effects of Dust at Surface Mineral Workings* (Arup Environmental Effects of Dust at Surface Mineral Workings) notes that larger dust particles (greater than 30 µm), which make up the greatest proportion of emissions from mineral workings, tend to deposit within 100 m of the source (ME EIC and see footnote 30, p.22 , **CD12.11**). The same publication identifies that concerns about dust are most acute in close proximity to sources, typically within 100 m. Similarly, Minerals Planning Guidance 11 states that the potential for severe dust impacts is greatest within 100 m of dust-generating activities.

31. This understanding is reinforced by the IAQM Minerals Dust Guidance, which indicates that adverse dust impacts from sand and gravel operations are uncommon beyond 250 m, with the greatest impacts generally occurring within 100 m of the source [see IAQM Guidance at Box 2, p.12, **CD12.11**]).

32. Although the National Planning Policy Framework does not prescribe a fixed buffer distance, it requires that minerals planning authorities ensure that dust emissions are

controlled, mitigated, or removed at source. In addition, Planning Practice Guidance Minerals emphasises that any separation distance should be determined on a site-specific basis and be effective, justified, and reasonable. While not directly applicable in this jurisdiction, the Minerals Technical Advice Note (MTAN) Wales 1: Aggregates provides further contextual support by identifying a minimum buffer distance of 100m for sand and gravel quarries, indicating the scale at which dust effects may reasonably be expected. This Technical Advice Note is the considered position of Welsh government on expert advice and whilst not applicable as a matter of law it has evidential value in underlining the concerns around proximity and dust impact.

33. The IAQM Minerals Dust Guidance is widely accepted as an appropriate methodology for identifying locations where mineral extraction and associated activities may present an elevated risk of adverse dust effects at sensitive receptors (ME EIC/ KS XX). The purpose of such an assessment is to inform the need for proportionate mitigation, distinguishing between situations where standard good practice is sufficient and those where additional, site-specific measures are warranted. It is important to note, however, that the guidance does not provide a predictive assessment of dust effects, nor does it quantify the absolute effectiveness of mitigation measures.

34. 'Slight' to 'moderate' dust disamenity effects are understood to 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 (see Table 1 in KH POE). A classification of "moderate adverse" is significant in terms of the guidance and associated descriptors. This represents the position prior to the consideration of any additional mitigation measures set out in the draft Dust Management Plan (DMP) (KH XX).

35. It is not possible to confirm the effectiveness of proposed mitigation measures, only that their application will be a proportionate reaction to minimise effects (ME EIC). The assumption is ***not*** that mitigation will resolve all residual effects (ME EIC). Within Table 2 of Ms Hawkins' Proof of Evidence, a further step is introduced whereby the risk classification for all receptors is reduced by one category (for example, from moderate to slight). This approach does not form part of the IAQM methodology.

Furthermore, the guidance does not provide any assurance that the implementation of mitigation measures, whether individually or collectively, will eliminate residual effects (ME EIC, KH XX). As the assessment is not predictive, the actual effectiveness of such measures can only be determined during site operation as KH accepted in XX. KH's table 2 applies a blanket reduction to all receptors classified as 'moderate adverse' takin them down to 'slight adverse' a difference in category not degree. This is despite measures not necessarily being effective for all receptors and the absence of any fine-grained assessment to support such a conclusion (see by way of comparison the detailed work in support of Table 1, at appendix KH9) and the fact that not all measures identified will in fact be applicable to each receptor (as discussed further below).

36. The draft DMP therefore represents an ***intention*** to implement further mitigation. While the application of such measures is considered necessary and proportionate, their effectiveness in reducing impacts to an acceptable level cannot be confirmed at this stage.

37. In the circumstances of this case, the DMP may reduce impacts to some extent but will not take such impacts from the category of 'moderate' to 'slight'. A significant adverse impact will remain.

38. The retort that the DMP is a standard industry tool is nothing to the point. It is precisely because the DMP is generic and standard that it is unlikely to deal effectively with this Site with its atypical approach of pushing works right up to the boundaries.

39. The proposed dust deposition monitoring under the DMP is inadequate as a management tool, in that it relies on 4 week periods. By the time frisbee gauge results have been obtained and analysed, and it is therefore apparent that there has been a significant dust impact, there will be no time to do anything about it.

40. The DMP's approach to inspection is also problematic. The large fences now proposed at Red Lea, Woodlands and Mytax/ New England will mean that a visual inspection to note dust outside the boundary will not be possible. This is particularly the case where

the fence is between private property with no ability to enter that property to observe dust deposits. In any event, the commercial and operational pressures in play when work is of such a short duration (during excavation under the bund, for example) is such that it is not realistic to expect workers to stop work every time dust (inevitably) travels outside the Site boundary. Indeed, in such a scenario it is helpful to employ a little common sense. If one worker does notice dust outside the boundary and relays that to their supervisor- what is the likely response? Probably a confused "*well of course*" in view of the distances in play followed by an exhortation to carry on because time is limited and workers are on short-term contracts and undertaking short time-limited campaigns.

41. In terms of receptor proximity, it is agreed that sensitive receptors are located within 100 m of proposed activities, including site preparation, mineral extraction, on-site haulage, processing, and restoration. In several cases, receptors are significantly closer than this indicative "at-risk" distance. In the real world, the dust effects of these activities are unlikely to comply with Policy DM2 of the Lancashire County Council Minerals and Waste Core Strategy and Local Plan, which requires that impacts be reduced to acceptable levels, taking into account neighbouring land uses (RS EIC, drawing on his industry experience).

Highways

42. In highways terms there are several live issues.

43. The proposed site access requires the provision of vehicular visibility splays measuring 2.4 m by 52 m, as set out in paragraph 5.2 of the proof of evidence (RD EIC). However, the visibility splays to the west extend across third-party land, namely the existing hedge, and are therefore outside the control of both the Appellant and the Highway Authority.

44. As a result, there is no mechanism to prevent obstructions exceeding 1 m in height within the required visibility envelope (RD EIC). Mr Budd is simply wrong to assert that the necessary visibility can be achieved within land under the Appellant's control and

the adopted highway, subject to vegetation management. The extent of the highway boundary is instead considered on the basis of the "hedge-to-hedge presumption," as set out in RD EIC/ rebuttal.

45. The leading case on the hedge to hedge presumption is *Hale v Norfolk CC CA (2001) Ch* 717:

"33 It seems to me much less clear that there is any foundation for a presumption of law that a fence or hedge which does, in fact, separate land over part of which there is an undoubted public highway from land enjoyed by the landowner has been erected or established for that purpose. It must, in my view, be a question of fact in each case. To take an obvious example: there could be no room for any such presumption unless the highway predated (or was contemporary with) the fence or hedge. If it were unknown which came first, I can see no reason in principle for making an assumption—or adopting a presumption—that the landowner fenced against the highway rather than that the highway followed the line of the existing fence. Whether it is right to infer, as a matter of fact in any particular case, that the landowner has fenced against the highway must depend, as Lord Russell of Killowen CJ observed in Neeld v Hendon Urban District Council 81 LT 405, 409 on the nature of the district through which the road passes, the width of the margins, the regularity of the line of hedges, and the levels of the land adjoining the road; and (I would add) anything else known about the circumstances in which the fence was erected. If nothing is known as to the circumstances in which the fences were erected, the fact that the soil of a highway and the adjoining land on each side was once in common ownership and that the highway is separated from the adjoining land by continuous fence lines may well enable a court properly to infer that the landowner has fenced against the highway; that is to say, "that the fences may prima facie be taken to have been originally put up for the purpose of separating land dedicated as a highway from land not so dedicated", per Vaughan Williams LJ, at p 410. But it is, I think, wrong to treat the remarks of Vaughan Williams LJ in Neeld's case as authority for a presumption of law that, whenever it is found that a highway runs between fences, the fences were erected for that purpose."

46. In short, one must draw appropriate inferences about the intentions of the landowner with regards to dedication of any land from the facts that are known about the circumstances in which the boundary features were erected. The question as to whether the boundary features were erected by reference to the highway is a matter of fact to be resolved on the individual facts of the case.

47. In this case, RD's evidence is that it can be inferred that the hedge was grown by reference to the highway. This inference is drawn from Lancashire County Council having no record of cutting or maintaining the hedges along Lancaster Road, and that the space between the hedgerows on either side would historically have provided the width needed for carts and carriages to pass with there being no available highway space to create a footway, for example. This section of highway predates 1786, when the first highways plan showing this area was produced by Yates.

48. This evidence gives rise to the "hedge to hedge" presumption, with the highway being taken to extend to the carriageway side of the rootstock of the boundary hedge. As such hedges do not form part of the highway and are not highway assets. They are private assets.

49. On this basis, a safe and policy-compliant access cannot be delivered as proposed. There is no legal agreement in place to secure additional land or to protect the visibility splays, giving rise to an unacceptable highway safety risk, contrary to paragraph 116 of the National Planning Policy Framework, Policy DM2 of the Joint Lancashire Minerals and Waste Local Plan, and Policy CDMP6 of the Wyre Local Plan.

50. The land registry title documents pertaining to the Site Access have been placed before the Inquiry. It is clear that Ms Barker Wild owns the strip of land between the Site access and the 'drain' demarcation on the title plans. She sold the land containing the access to the Hardings, who then in turn sold the access strip to the Appellant. Evidence submitted to the inquiry demonstrates that Ms Barker Wild is an objector and has been for some time (see her email to Cllr Rushworth and name raised in opposition in the Updated Transport Statement document). The evidence before the

inquiry is that she is not inclined to sell her land or any rights over it and is not a supporter of the Appeal Scheme. Whilst Mr Barrett may well advise that minds can change particularly when there is a commercial incentive, this is pure speculation. The evidence supports non-ownership, no inclination to sell and opposition to the Scheme. The inquiry must proceed on the basis of the evidence not conjecture. The appeal decision provided to the inquiry supports the inability to impose a Grampian condition in analogous circumstances.

51. The use of Grampian conditions is covered in PPG: "*Such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission*" (ID21a-009).

52. In *Mead Realisations Ltd v Secretary of State for Housing, Communities and Local Government* [2025] EWCA Civ 32 the Court explained that the legal status of the NPPF and the PPG is essentially the same; no legal distinction exists between them. Both are statements of national policy issued by the Secretary of State exercising his general power to do so as minister with overall responsibility for the planning system. They have somewhat different purposes, but the PPG is not subservient or subordinate to the NPPF in a hierarchy of national planning policy. Policies in the NPPF and guidance in the PPG may be used as an aid to interpretation of each other. The publication of the PPG does not need to be contemporaneous with the NPPF in order to explain its intention. Together the NPPF and PPG "*form a mature body of planning policy and guidance*" [34].

53. It is acknowledged that there is no statutory bar to the imposition of a Grampian condition regarding access on a grant of planning permission. The impediment to the use of a Grampian comes from PPG. PPG is of equivalent status to NPPF as a statement of national policy (*Mead*). It is therefore a material consideration of considerable weight and guidance to which there should be adherence. On the evidence there is "no prospect at all" and as such government direction is to decline to impose a Grampian. Failure to have regard to this material consideration would be an error of law. The MPA simply submit that government in PPG should be followed in this case. It is unclear whether the Appellant's case is (as bold as to say) that there should be

departure from government guidance. If that is the position, such a cause of action would be vulnerable to challenge on public law grounds on the basis that there is no rational basis for such a departure.

54. This visibility splay has been calculated with reference to the advice in Manual for Streets and by applying the formula set out in that guidance. RD has used the 85th percentile and assumed an access used by all vehicles. This approach follows guidance and is impeccable in that respect.

55. The Appellant's last minute answer to this point is to reduce visibility splays and to offer alternative splays in the available space. In evidence in EIC (but not set out in his proof) Mr Budd set out that he had deviated from the standard approach in Manual for Streets on the basis that non-HGV use would be minimal, speed limits on Lancaster Road could be enforced and a reduced visibility splay would encourage people to slow down. These points fail to acknowledge that the visibility splays should be designed for the road ***as is*** not some future hypothetical road with separation marks and better speed limit enforcement. This is particularly where there are no guarantees that such measures will be forthcoming nor are such measures secured by the Appellant. Assuming that a reduced splay will cause drivers to slow down is a high risk assumption on a road where there are existing problems, around 5 HGVs an hour (one every 12 minutes) could be exiting the highway and, on the Appellant's own admission there is only approximately 30 seconds of drivetime from the junction. RD's safety led, MfS compliant visibility splays designed for the existing road are to be preferred.

56. It is worth re-iterating that the Appellant's own travel plan encourages walking to work and cycling to work. RD's evidence about cycle clubs, equestrian use and bus stop routes is not challenged. In that context it is quite extraordinary that the Appellant wants to promote anything other than the safest access supported fully by technical guidance.

57. The LPA does not accept that the Appellant can accommodate its alternative visibility splays in the access. The best evidence of the position on the ground is the site visit or a further site visit if necessary. The hedge on the highways side is already maintained

close to root stock. There is not much more that can be done to take in the part of the hedge or side of the hedge over which highways rights might subsist. The field-side of the hedge is bushier and overgrown. This is the part in contested ownership. This is the Appellant's case to prove.

58. The existing highway network, including the A588 and Lancaster Road, is subject to significant physical constraints. Across much of its length, the carriageway is insufficient to accommodate two-way HGV movements and, in certain locations, even two-way general vehicular movements where larger vehicles such as buses or wide vehicles are present. This position is captured in RD's RPoE at Appendix 1. JB has produced nothing to challenge the veracity of that depiction. The depiction is favourable to the Appellant as it assumes the now withdrawn widening. RD RPoE Appx 1 clearly shows that there are multiple locations (4) where to HGVs cannot pass. JB referred to a video showing two HGVs passing (not produced for the Inquiry) but without knowing where the vehicles passed and the size of the vehicles or seeing the video this goes no further. RD RPoE Appx 1 clearly shows that there are multiple locations (4) where to HGVs cannot pass on assumptions generous to the Appellant. JB's only real answer to this point was to rely on HGV driver skill. There is no policy support for relying on driver skill to make up deficiencies in the network. The onus is on the Appellant to demonstrate highway safety in their Scheme not to pass the problem on to their drivers.

59. Highways safety is a knockout blow for the Scheme – a standalone reason to refuse permission (RS and JB).

60. Particular constraints arise at locations such as the Fold House Farm bend and the junction of the A588 with Burned House Lane, Park Lane, and Cemetery Lane. These limitations are of particular concern when considered alongside the proposed intensification of use, which would introduce approximately 120 two-way HGV movements. Mr Budd refers to a minimum carriageway width of 6.7 m for two-way

HGV movements[4], although this standard applies only to straight sections and does not account for horizontal alignment or other constraints. RD's evidence demonstrates a number of existing issues, including verge overrun, loss of edge support, restricted forward visibility, and recorded instances of vehicle conflict and damage, particularly at constrained bends and junctions. All of these issues are consistent with a rural road of varying dimensions unsuited to the sort of traffic the Appeal Scheme will generate. None of these existing issues are challenged factually (JB XX).

61. Two alternative widening schemes were proposed, one by Turner Lowe and another by SCP. Both relied on the assumption that works can be contained within the existing highway boundary, defined by the hedge root stock. However, neither scheme was supported by site investigations to confirm feasibility. Along Lancaster Road, the Appellant now contends that widening works are not necessary; however, evidence demonstrates that the carriageway width is generally below the 6.7 m standard, with only limited short sections approaching this width near the A588 junction. In this view JB's opinion differs from the Appellant's own highway consultant, Mr Lowe.

62. Notwithstanding these proposals, two-way HGV movements cannot be accommodated along the full length of Lancaster Road. The Turner Lowe submission is illuminating in terms of the real world issues because it relies on swept path analysis showing HGVs tracking along the extreme edge of the carriageway. This is considered unrealistic in practice, as it would result in conflict with roadside features and generate debris on the carriageway, to the detriment of highway safety. As RD explained in EIC, vehicles would be unable to maintain lane discipline, necessitating reversing manoeuvres to allow opposing vehicles to pass. Additional swept path analysis demonstrates encroachment onto third-party land and identifies a significant conflict zone between Hillfield House and Pointer Cottage, where opposing HGVs would overlap over a distance of approximately 100m. This area is constrained by poor

[4] See JB PoE at 5.11: "*the total width requirement would be 6.7m for the vehicles to pass on a straight section of road".*

forward visibility due to road alignment and includes the Vine House bend, where two-way movements have previously been acknowledged as not possible. Recorded incidents, including collisions and near misses involving large vehicles, further highlight the risks associated with these constraints.

63. The SCP submission similarly identifies that two-way HGV movements would not be possible along the full route, with several localised conflict zones remaining. Even in locations where vehicles could pass, the available clearance between HGVs is minimal, leaving no margin for driver error and relying on precise vehicle positioning, which is unlikely to be consistently achieved in practice. Swept path analysis also indicates potential conflicts with street furniture, raising further concerns regarding the practicality of the proposed arrangements.

64. The introduction of additional signage along Lancaster Road and the A588 has been proposed by way of mitigation. However, such signage must comply with relevant guidance, including requirements that signs do not encroach within 0.5 m of the carriageway edge and are located within the highway boundary unless supported by legal agreement. The proposed signage does not appear to meet these requirements and may introduce additional obstructions. Moreover, signage would not mitigate the underlying constraints but would merely highlight them, with HGVs still required to undertake reversing manoeuvres in constrained locations, thereby increasing safety risks.

65. In terms of signs on third party land, LCC rely on the advice set out in **ID14** to support the proposition that placing infrastructure on third party land requires consent from the landowner. The Traffic Signs Manual produced by the DfT in Chapter 1 at 3.3.2 is supportive of the Highway Authorities position on the law in respect of third party rights (**CD11.04**). The manually is specifically concerned with signs under the RTRA 1984. There is no distinction in the manual between different categories of traffic authorities in terms of the ability to place signs on third party land. The advice is clear: consent must be obtained.

66. Concerns also remain regarding the feasibility, practicality, and enforceability of the proposed Vehicle Management Plan or Servicing Management Plan. The evidence presented does not adequately demonstrate how two-way large vehicle movements associated with the development would be safely managed along Lancaster Road. While reference is made to other schemes, these do not provide directly comparable or effective mechanisms. In particular, there is no strategy nor any possible strategy for managing vehicles already on the network, nor is it possible to control third-party HGV or large vehicle movements. As a result, the potential for conflicting movements and associated reversing manoeuvres remains, increasing the likelihood of collisions.

67. The UU is lacking in one critical respect: there is no obligation to actually provide the Traffic Management Scheme to the County Council. Thus, the requirement to notify the Council of breaches of it is pointless (JB XX).

68. Finally, the impact on other road users must be considered. It is not accepted that Lancaster Road is rarely used by pedestrians, cyclists, or equestrians, with evidence demonstrating regular use by these groups. The proposed development would materially worsen conditions for such users. Carriageway widening would reduce the limited protection currently afforded by verges, placing pedestrians in closer proximity to traffic. Increased reversing movements by HGVs would present additional hazards, particularly where mitigation measures such as folding wing mirrors are proposed. This would compromise driver visibility and situational awareness, increasing the risk of conflict with other road users, including cyclists approaching from the rear. Such arrangements would therefore be detrimental to highway safety and would not accord with paragraph 117(c) of the National Planning Policy Framework, which requires developments to create safe and attractive environments that minimise conflict between vehicles and vulnerable road users.

69. There is a degree of unreality in the Appellant's submissions. They fail to consider the daily reality of these movements on the network throughout the week. The issue is that scale of the change: a difference in kind not degree (the landmark shift in off-site planning effects, RD EIC) and the constant presentation of the same risks again and again throughout the week. This is not a hypothetical swept path exercise in

establishing whether two HGVs can pass. It is a real world exercise in considering the daily reality of this landmark change, a situation in which HGVs have to navigate unsuitable roads passing other large vehicles to the detriment of other road users. In this respect third party evidence about the day to day difficulties of this road network are illuminating. The roads in question are difficult and dangerous in the existing situation. The Appeal Scheme will lead to unacceptable impacts on highway safety which cannot be adequately mitigated.

Benefits, Harms and the Planning Balance

70. The benefits are largely agreed. The contention that RS has failed to give 'great weight' to the benefits of extraction and job creation is unsustainable given the repeat references to that requirement in his PoE and explicit mention of it in his benefits table. Given the agreement on the great weight to be attributed to benefits, the details of the debate around need and supply are "a forensic cul de sac" (LT XX). RS's explanations are by way of further context (RS EIC). The position is precisely as set out in opening: benefits are acknowledged, great weight is given in view of policy advice, but benefits are simply not determinative of the appeal in view of harms.

71. The controversial points are the harms, the weight to be given to those harms and the balance of issues (LT XX).

72. The tilted balance applies and the LPA contend that the harms significantly and demonstrably outweigh the benefits. Further and in any event in light of those harms, the Appeal Scheme is not in accordance with the Development Plan.

73. 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.

74. Further, there is real doubt that technical compliance will be achieved, or if so achieved such compliance will be 'just' within acceptable bounds making exceedance likely.

75. This was precisely the point in the decision Land at Ware Park, Wadesmill Road, Hertford (**CD 8.02**).

    See for example at **CD 8.02** [392]:

    ….But irrespective of whose analysis is preferred, the evidence indicates that at times the operation would be likely to generate noise levels close to the acceptable limits set out in the Guidance. In certain weather conditions noise could exceed acceptable limits for short periods. In addition, the character of noise emitted by operational development would be distinctive. If this resulted in complaints, these could take time to monitor, and to devise and implement mitigation measures. During such times noise could be intrusive for local residents, especially given the proximity of dwellings at Sacombe Road...

    And **CD 8.02** [394]

    …I am not convinced, given the separation distances between the proposed excavation and nearby dwellings that there would be sufficient headroom here, between likely noise levels from the operation and acceptable noise limits, to be confident that the proposed development would not, at times, result in an adverse noise impact that would harm the living conditions of nearby occupiers and the amenity of the area…

76. Further, DG and RS explained in EIC how in this scenario the 'stop-start' dynamic of constant interruptions and attempts to achieve compliance is in itself unpleasant and causes disamenity in its own right.

77. The relatively short duration of the works is no answer to the point. The intensity of the campaigns only underlines concern about the noise and dust impacts. The timing of the campaigns in summer: precisely when people are most likely to open windows,

hang laundry outside and use their gardens. LT's reluctance to concede this compelling and obvious point in XX is not to his credit as a witness. With his inability to make even the most reasonable or common sense of concessions one is compelled towards the conclusion that he is acting as an advocate for his client and not an independent expert giving his professional opinion for the benefit of the inquiry.

78. The piecemeal development of the Appeal Scheme is evident in the Appellant's failure to consider the landscape and daylight/ sunlight implications of the acoustic fencing it now relies on to manage noise (and seemingly dust). Had Dr Storey actually visited the Site before giving his evidence or his recommendations and had the Appellant considered these suggestions in a wider context before adopting these suggestions at the last possible minute (seemingly day two of the Inquiry) then these points could have been considered. The development is EIA development, and it is difficult to understand how 3m bunds require assessment but 3.8m acoustic fences do not.

79. The Human Rights Act 1998 requires the LPA and decision maker to take account of the rights of individuals under the ECHR and to avoid acting in a way that is incompatible with those rights. In particular, Article 1 of Protocol 1 provides that the peaceful enjoyment of property should not be interfered with except where such interference is lawful, necessary, and proportionate. The interference has not been demonstrated to be proportionate, given that the technical evidence on noise and dust indicates that adequate mitigation has not been secured.

80. The roads are not safe or suitable for the appeal scheme. The proposed HGV movements give rise to safety concerns. Should the Inspector agree, highways safety is an absolute reason to refuse the Appeal Scheme. A proposition supported by local plan policy and NPPF.

81. It is worth noting that if RD's evidence on highway extent is preferred (as it should be for the reasons set out) then the access arrangements cannot be implemented. The deliverability of the Appeal Scheme is then in doubt. On this basis, the weight to be

given to the benefits of extraction and job creation is in doubt since it is unclear whether the Appeal Scheme will come forward and deliver those benefits.

82. The tilted balance is acknowledged to apply and in this case harms significantly and demonstrably outweigh benefits (RS EIC). However, this is not a case where the out of datedness or in datedness of local plan policy makes a great deal of difference to the policy position. The main issues (noise, dust, amenity, highways) are main issues under national policy considerations in any event.

83. Finally, the LPA notes outstanding matters in relation to SHRA and the consultation responses of Natural England. 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 views[5]. The consultation response is therefore a matter for the planning balance and weighs significantly against the Appeal Scheme.

[5] 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]).

Conclusion

84. For all these reasons, the LPA invites dismissal of this appeal. The planning balance does not fall in favour of the Appeal Scheme with harm significantly and demonstrably outweighing benefits.

Constanze Bell

Kings Chambers

Leeds, Manchester, Birmingham

23rd April 2026