TOWN AND COUNTRY PLANNING ACT 1990

APPEAL BY BAXTER GROUP LIMITED

LAND OFF BOURBLES LANE, PREESALL, LANCASHIRE

CLOSING ON BEHALF OF THE APPELLANT

Introduction

1. The Opening[1] delivered at the start of the inquiry is adopted without further repetition.

2. The description of the development is as follows:

> *"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."*[2]

3. The application was refused at the LCC's Development Control Committee on 15th October 2025. The Officer Report ("OR")[3] recommended refusal of the application.

4. The Decision Notice[4] cited the two RfR in the case.

5. The CMC identified the following main issues in the appeal:

[1] ID 2
[2] ID 22
[3] CD 6.02.
[4] CD 6.01.

(a) The need for the proposed development with particular regard to the landbank position for sand and gravel and the need for inert waste disposal in the County.

(b) The effect of the proposed development on highway safety and the free flow of traffic.

(c) The effect of the proposed development on the living conditions of the occupants of nearby residential properties with particular regard to air quality, dust and noise.

Site Description

6. The SoCG at section 3 provides an agreed description of the AS and environs.

Geological Investigation and Mineral Reserves

7. This is presented in unchallenged evidence from SR. The laboratory testing of the borehole samples confirm that the sand and gravel is proved on the AS to be a high-quality deposit can be used in a range of concrete products, drainage aggregates and other high specification construction materials.

8. The extraction area is approximately 11.9 ha and is estimated that 513,000 tonnes of sand and gravel is present across the AS and following processing 487,000 tonnes of saleable aggregate products would be available. These will be sold into the local market over a period of 4 – 5 years assuming an output of 100,000 tonnes per annum. The restoration phase to agriculture may take a further 2 years to complete. The imported inert fill materials will be about 220,000 m^3.

Overview of the Proposals

9. SR explained all sand and gravel extraction within each proposed phase will be excavated in a series of "*campaigns*" over approximately 4 – 6 weeks. The campaigns will take generally twice or up to three times in a year mainly during the Spring through to Autumn. This ensures works are undertaken when the water table is at its lowest and that ground conditions will be relatively firm. Extraction of mineral deposits will not take place during the wetter winter months. The Site development will be progressed over six defined phases of operation.

Main Issues

(a) The need for the proposed development with particular regard to the landbank position for sand and gravel and the need for inert waste disposal in the County

10. Paragraph 226 of NPPF requires Mineral Planning Authorities to plan for a steady and adequate supply of aggregates. In the context of sand and gravel, this is one of "*at least 7 years*".

11. most reliable information about sand and gravel reserves, land bank and future needs are contained within the Local Aggregate Assessment 2023[5] that used 2022 data and the North West Aggregate Working Party Annual Monitoring Report 2025[6] that uses 2024 data. The claimed land bank of sand and gravel is stated to be around 4.3 million tonnes. However, the reality is markedly different. Within Lancashire four quarries are relied upon, two of which are inactive. Runshaw Quarry is identified as holding most of the permitted reserves: 4.1 MT of the 4.3 MT but this site is inactive. Conditions on the permission at Runshaw Quarry require the mineral operations to cease not later than 15 years and 6 months from commencement with the position being the operational life of the mineral quarry ceases in July 2026. LT states that it is the industry's understanding that the site does not contain concreting sand[7].

12. Once Runshaw Quarry is eliminated from the land bank, there would only be 0.2 MT of permitted reserves, and this would amount to the equivalent of a 0.5 year land bank[8]. There is only one undetermined application that was validated in March 2021 and since then it has not progressed.

13. This dire position in Lancashire is confirmed by the correspondence at Appendix 3 of the evidence of LT. Furthermore, there is nothing by way of application on the horizon to increase supply.

14. The need for minerals was agreed noting that the OR[9] at Paragraph 70 stated:

> "*… the proposal would meet a pressing and demonstrable need for new sand and gravel reserves in Lancashire …*"

[5] CD 7.05.
[6] CD 7.07.
[7] LT PoE 4.2 13/13.
[8] LT PoE para 4.4.15
[9] CD 6.02.

15. Whilst RS (LCC) Section 7 of PoE raised the availability of alternative sources of supply case as expressed on the OR remains their position[10] and the issues raised are comprehensively addressed in the Rebuttal of LT.

- Operators of concrete plants confirm there are no concreting sand sources and concreting sand is currently imported from Cumbria, Cheshire or Merseyside.

- No evidence has been provided that any recycled source meets the appropriate British Standards for concrete production. The Appellant has direct evidence and direct experience of operators explicitly rejecting recycled sand for concrete production for this reason[11].

- Hard-rock aggregates sources of supply, quite simply crushed limestone and gritstone aggregates cannot replace concreting sand

- NPPF does not indicate that the Council can avoid the requirement to maintain a minimum 7 year land bank for sand and gravel

Inert Waste

16. The AS will import 220,000 m^3 of inert restoration material consisting of clean excavated materials of clays, overburden and soil-making material. This is not landfill but a recognised "*recovery*" operation.

17. The Local Aggregate Assessment[12] (October 2023) recognises the major infrastructure projects would influence aggregate demand and the need for inert waste capacity. The capacity within the AS would be locationally sustainable for the central and northern Lancashire and about 30% of the inert waste will used by the Appellant. The remainder will be brought to the site by contractors with whom they work and would therefore be locally sourced.

18. The LCC case simply puts forward a case of plentiful void capacity within Lancashire but does not address the locational imbalance of existing sites - almost all lie to the south of Preston;

[10] RS Xx
[11] Rebuttal PoE LT para. 4.1.5
[12] CD 7.06.

the sustainability benefits of local capacity; the Appellant's own need as a local developer or address the sustainability issues concerning transporting waste longer distances.

(b) The effect of the proposed development on highway safety and the free flow of traffic

Introduction

19. Paragraph 116 of NPPF states:

> "*Development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios.*"

20. The evidence of JB demonstrated:

(i) The AS would have a safe and suitable access onto the public highway and applying the relevant highway design standards will demonstrate that the AS would have a safe and suitable access onto the public highway

(ii) the use of the highway network in the vicinity of the proposal will not result in unacceptable safety issues arising principally from the increase in HGV traffic.

(iii) Any effect of the traffic is capable of being mitigated and the concerns expressed over the ability of the width of the carriageway to accept an intensification of HGV movements is not warranted.

Overview of Highway Proposals

21. All HGV traffic generated by the proposal would travel to and from the east on Lancaster Road. A routing strategy will ensure that all HGVs will access the A-road network via the shortest most appropriate route. The appeal proposal is for a priority-controlled arrangement with the geometry of the access to enforce all inbound and outbound HGV traffic movements to and from the east.

22. Lancaster Road is subject to a 30 mph speed limit introduced in 2022. The metalled road surface varies in width from 6 m at the site access to approximately 5.5 m at the Vine House bend. Lancaster Road is used by HGVs, buses, cyclists, pedestrians and horse riders.

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23. The extent of the adopted highway along Lancaster Road is significantly wider than is apparent on Plan. JB at Appendix JRB2 has superimposed the topographical survey data for Lancaster Road against the extent of the adopted highway provided on the official plans by LCC to the Appellant on two separate occasions; the first in 2020 and the second in 2026.

24. JB gave unchallenged evidence that there is considerable correlation between the adopted highway plans prepared against Ordnance Survey background information and the topographical survey information. As a result, JB has concluded that the hedgerow along the northern side of Lancaster Road at the location of the site access is maintained at public expense by LCC.

Restrictions on the use by HGVs.

25. The total effect of the development would be an average of 74 two-way HGV movements per day over five years with an additional 34 HGV 2-way movements per day for the following year of restoration traffic. In addition, the development would also generate small numbers of staff trips by car with between 5 and 11 employees on site on any day.

Site Access

26. For a 30 mph road, this would typically be 2.4 m x 43 m. During the consideration of the application, a reduced X-distance of 1.2 m was agreed to reflect that drivers of HGVs sit much further forward in the cab. LCC has reverted to the 2.4 m X-distance requirement on the basis that the access will also be used by employees and visitors to the site and will not therefore be exclusively HGV use. The Council insists on the Y-distance splay based on 85th percentile speed on Lancaster Road. Using the 37 mph recorded speeds would require a splay of 52 m in accordance with the Manual for Streets Stopping Sight Distance formula[13].

27. The professional view of JB[14] is that a 1.2 m x 43 m visibility splay would be suitable for an access predominantly by HGVs onto a 30 mph road.

[13] CD 11.01(MfS2) paragraph 10.1.4
[14] JB PoE para.4.40 18/77.

28. The access splay required by LCC based on the adopted highway plans provided can be achieved. However, it is the Council's case that the splay cannot be achieved as their adopted highway plan cannot be relied upon as an accurate reflection of the true extent of the highway. The Council argue that the presumption of "hedge to hedge" should be applied to determine the extent of highway. The Appellant does not agree. The Appellant consider that the best evidence of highway extent is the publicly available plans.

29. In any event, if the 1.2 x 43m is appropriate in capacity and safety terms ID34 demonstrates it can be achieved within the restricted area the Council accepts is highway land. It is appropriate because:

(a) The use is predominantly by HGV and an X distance of 1.2 is sufficient for drivers

(b) The splay can take into account the advice in MfS2 at 10.5.5

"Some circumstances make it unlikely that vehicles approaching from the left on the main arm will cross the centreline of the main arm - opposing flows may be physically segregated at that point, for example. If so, the visibility splay to the left can be measured to the centre line of the main arm."

(c) The SSD is more than sufficient to enable other road users to be aware of the presence of vehicles at the AS junction – plan 3 ID 34 and this is consistent with MfS 2 paragraph 10.5.9 that advises the Y distance should be based on SSD values and acknowledges that "*a reduction in visibility below recommended levels will not necessarily lead to a significant problem*."

30. The Appellant recognises that this issue cannot be resolved at the appeal as the matter is a legal issue.

<u>Legal Submission on the Deliverability Issue</u>

31. This can be resolved by a pre-commencement Grampian style condition even if one assumes it is outside the control of LCC or Appellant.

32. The House of Lords in ***British Railways Board v Secretary of State for the Environment and Hounslow LBC*** [1993] 3 PLR 125 expressed a clear view in respect of the legal position. The BRB application included land owned by Hounslow who were implacably opposed to the

development. The application was refused on the basis that there was no prospect of the necessary condition being fulfilled.

33. Lord Keith of Kinkel

> *"… the mere fact that the owner objects and is unwilling that the development should go ahead cannot in itself necessarily lead to a refusal. The function of the planning authority is to decide whether or not the proposed development is desirable in the public interest. The answer to that question is not to be affected by the consideration that the owner of the land is determined not to allow the development so that permission for it, if granted, would not have reasonable prospects of being implemented … there is no absolute rule that the existence of difficulties, even if apparently insuperable, must necessarily lead to refusal of planning permission for a desirable development"*

34. He continued:

> *"If the condition is of a negative character and appropriate in the light of sound planning principles the fact that it appears to have no reasonable prospects of being implemented does not mean that the grant of planning permission subject to it would be irrational in the* ***Wednesbury*** *sense so that it would be unlawful to grant it".*

35. Following the ***BRB*** case the subsequent Circular 11/95 stated:

> ***"40.*** *It is the policy of the Secretaries of State that such a condition (a Grampian Condition) should only be imposed on a planning permission* ***if there are at least reasonable prospects*** *of the action in question being performed within the time-limit imposed by the permission".* [emphasis added]

36. The current policy is in PPG Paragraph: ID: 21a-009 dealing with Grampian conditions provides:

> *"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."* [emphasis added]

37. The latest policy represents a higher threshold to be established before rejecting a Grampian condition. There is no **legal** requirement that obliges a decision-maker to refuse planning permission if an owner says his land will never be made available. The **policy** position is

different, but the threshold is increased to refuse only "*where there are no prospects at all*" of the action being performed within the lifetime of the permission.

38. Firstly, upon the assumption that ID37 is the current view of the owner it is only potentially relevant to the issue of the RD requirement of 2.4 x 52m. TP land is not needed for ID34 schemes as the highway is within the south side of the hedge and under the control of the highway authority applying their "hedge to hedge" presumption.

39. Secondly, expression of a current intention to implacably oppose is far from conclusive evidence of "no prospect at all". A significant commercial development and value associated with it is markedly different from the single house proposal and neighbour squabble in the DL at ID38. Minds may change and frequently do especially when concerns over amenity and health impacts are assuaged by cogent evidence accepted by an independent body.

40. As such (and bearing in mind that there is no development unless and until the Grampian restriction is removed) there is no basis in law or policy to refuse the application.

Lancaster Road

41. HGVs already use Lancaster Road in both directions. There is no accident record that highlights any existing problem. LCC are not sufficiently concerned that they are not intending to bring forward any proposals to deal with the issues[15] pertaining to road users but whilst there will be a notable percentage increase in HGV use in absolute terms the use will be low[16]. The 250 m section of Lancaster Road before the junction with the A588 is the subject of LCC's objection that relates to the increase in HGV traffic movements along this section based on width of the roadway. However, as JB's evidence demonstrates, forward visibility of oncoming traffic, particularly for HGV and public transport drivers, is good as currently occurs. The drivers, as must currently occur, slow down and take into account wing mirrors. There have been no recorded accidents involving two large vehicle types on Lancaster Road and no evidence that HGVs meeting has caused accidents[17] and no evidence of reversing of HGVs.

42. The Appellant proposes:

[15] Xx of RD
[16] Xx of JB
[17] JB PoE para 5.9 26/77

(a) A vehicle management scheme for the timing of outbound HGV movements. The Appellant is able to exercise over the access and secured by a planning condition.

(b) The measurements taken by RD were limited to the metalled (black top) of the highways in the area[18]. Even on the "*hedge to hedge*" case of the Council widening is an option such that approximately 300 mm on both sides of Lancaster Road can be made available[19]. JB does not consider that the widening works are necessary[20].

43. The impact upon the existing pedestrian activity along Lancaster Road is also addressed. Whilst no doubt used by pedestrians from time to time it is unlikely that Lancaster Road is subject to significant use by pedestrians as there is an existing lack of formal footways, the remoteness from everyday amenities and facilities[21].

Signage

44. The Appellant understands that LCC Highways are in favour of the signage in principle but have expressed concern as to the availability of space within the adopted highway to place the signs. JB has expressed the view[22] that there is sufficient space to provide suitable signage within the highway verge. Clearly this can be located within the defined highway hedgerow.

45. The question of whether the Council has powers to place signs within Third Party Land is again an issue incapable of being resolved in the course of the inquiry. RD cites paragraph 3.3.2 of the DfT Traffic Signs Manual that states that section 71 of the Road Traffic Regulation Act 1984 requires permission of the owner before placing signs on Third Party land[23]. ID14 is also referred to in support of the case that consent or a CPO is needed when dealing with TP land. Other than the fact that I was the author of the Legal Opinion I do not see any relevance to this case to a case concerning the placing of speed cameras under section 95A of the Highways Act 1980 that states:

> "*A highway authority may install and maintain* ***on or near a highway*** *structures and equipment for the detection of traffic offences …*"

[18] RD Xx
[19] JB PoE para 4.52 20/77
[20] JB PoE para.4.54 21/77.
[21] JB PoE para4.57 21/77
[22] JB PoE para.4.60 22/77.
[23] RD Rebuttal PoE paragraph 5.16.

46. Section 71 of the Road Traffic Act 1984 states:

> *"(1) A … local traffic authority … may enter any land and exercise such other powers as may be necessary for the purpose of the exercise and performance of their powers and duties of placing, replacing, converting and removing traffic signs or their powers and duties under section 69 of this Act.*

47. The question arises whether the power to enter land can only take place with the owner's consent. In the case of Parish Councils there is a power to erect signs, but this is qualified. Section 72(1) provides that a PC may provide on or near any road, traffic signs indicating a number of specified subject matter. Then at section 72(3) adds:

> *"No traffic sign, object or device provided by a parish or community council in pursuance of this section shall be placed on any land (not being a road or part of a road)* ***without the consent of the owner and occupier of the land****."*

48. The distinction is obvious – the PC powers are limited to TP land only with the consent of the owner whereas there is no such limitation or qualification on a local traffic authority under section 71.

49. Again, as interesting as this debate might be, it cannot be resolved at the inquiry.

<u>The A588 Fold House Farm Bend</u>

50. Again the main LCC concern appears to be the width of the road making it unsuitable to accommodate an increase in HGV traffic. It is an A road and already accommodates HGV traffic, the 2023 survey recording an average of 52 HGV movements on the A588 and no recorded accidents. 50% of the development HGV traffic would route via this section of the A588 and therefore an average of 37 daily movements (circa 4 per hour) could be expected. It is not "necessary" in the condition sense or CIL Regulation sense to mitigate the impact of this modest increase. However, new signage on the approach to the bend from each direction would be desirable.

<u>A588/Cemetery Lane/Park Lane Junction</u>

51. LCC are concerned that the width of the road makes it unsuitable to accommodate an increase in HGV traffic. It already accommodates HGV traffic with the 2023 survey recording an average

of 52 HGV movements. 50% of the development HGVs would route via this section of the A588 an average of 37 daily movements (again circa 4 per hour). could be expected to travel along this section of the A588. Again, it is not necessary to mitigate this increase in HGV traffic but it is also desirable to provide new signage on the approach to the bend from each direction.

52. Overall, the evidence demonstrates that:

(a) A safe and suitable access to the Site will be achieved within the land under the control of the Appellant and the HA.

(b) A concern that the increase in HGV traffic movements on Lancaster Road where the existing carriageway narrows to less than 6m is clearly overstated. Whilst there would be a percentage increase in HGV use, this would remain a low level of use in absolute terms and limited appropriate mitigation would be of a permanent benefit.

(c) At the two specified locations on the network where the HA consider there would be an unacceptable increase of risk of vehicle conflict, the existing data, particularly personal injury data, does not support the LCC case.

(d) The highway route for HGV access to the Site is safe for the proposed level of use.

(c) The effect of the proposed development on the living conditions of the occupants of nearby residential properties with particular regard to air quality, dust and noise

Noise

53. The RfR is not supported by any independent expert view asserting the proposal was unacceptable because of noise. The Atkins Technical Note[24] following the Regulation 25 letter stated:

> "*Noise levels from normal operations are within the 55 dB(A) criteria, but are more than 10 dB(A) above baseline noise levels in some circumstances. Noise mitigation is included to deal with the majority of impacts.*
>
> *If noise is a particular concern for this development, there may be benefits in the Applicant providing details about the noise attenuation of the proposed bunds, the potential for cumulative effects, and any other proposed noise management controls.*"

[24] CD 4.02.

54. This is not the language of a proposal unacceptable in principle.

55. The evidence on noise is provided by RS. Consistent with the Atkins' TN RS calculated site noise levels to be achieved of no more than 10 dB(A) above the representative background noise levels and resulted in a recommendation to some increase in bund heights and extent. The rebuttal of RS addressed the PoE submitted by DG and noted the evidence was (i) contradicted to other documents provided by LCC or Atkins (ii) ignored work prepared by RS that had been provided **prior** to the exchange of evidence and (iii) was flawed. The LCC PoE issues are addressed as follows:

(a) Baseline Conditions

These are no longer the subject matter of any dispute. The SoCG recognises that "*background noise levels are considered to be representative of the area.*"

(b) Plant Noise Data

Reliance on BS 5228-1, Annex C data is inappropriate because it is out-of-date with real world data as provided in the rebuttal of RS. He also addresses the issue of plant "*on-time*" noting the assumption of 75% is probably an overestimate.

(c) Noise impacts during normal conditions

DG only focused on the Vibrock ES at Appendix 9[25] and the updated Noise Assessment - Section 4[26] and ignored the conversation between experts.

(d) Noise impacts during short-term and temporal works

RS acknowledged in the experts' telephone discussion amendments to the scheme would be included to secure appropriately protective levels of noise at Woodlands and temporary barriers to protect properties.

(e) Sensitivity of receptors

[25] CD 1.21.
[26] CD 3.05.

External amenity space at Woodlands was addressed in the rebuttal of RS[27].

(f) Mitigation and noise management

The Appellant has pushed LCC for a draft planning condition requiring a Noise Management Plan and RS has drafted a "*Skeleton*" Noise Management Plan which includes a noise monitoring scheme, best practice requirements and a complaints procedure.

56. Prior to the construction of the noise bunds temporary barriers of acoustic fences are proposed to allow the extraction of the minerals to be undertaken whilst complying with noise limits for routine operations of no more than 10 dB(A) above the background. The barriers will remain in place during the bund construction operations.

57. By the time evidence was heard the issues had narrowed considerably with DG acknowledging in his Technical Note[28] that in his professional opinion the concerns over the Vibrock assessment[29] had been "*broadly addressed."* The sole remaining concern was control over the short term works extracting mineral prior to the construction of the bund immediately south of the Woodlands with DG's calculation predicted that the 50 dB limit *"would be exceeded within approximately 35m of Woodlands, with a higher predicted noise level of approximately 54 dB LAeq,1h.*" RS produced his own Technical Report[30] in response. There is an emphasis on practical responses. The upshot, as DG readily acknowledged[31], is that a range of responses were available to achieve levels of noise below the 50 dB LAeq, 1 hour.

58. RS produced his own Technical Report[32] as a response. There is an emphasis on practical responses. The upshot, as DG readily acknowledged[33], is that a range of responses were available to achieve levels of noise below the 50 dB LAeq, 1 hour. The responses were not cumulative and the fact that one was distance between source and receptor was not a preference. Indeed, if applied its effect would be the unnecessary sterilisation of minerals[34].

[27] RS Rebuttal PoE, para.2.70.
[28] ID 13
[29] CD 3.05
[30] ID 15
[31] Xx of DG
[32] ID 15
[33] Xx of DG
[34] Xx of DG

59. RS made the following points capable of being dealt with in a Noise Management Plan:

(i) As the duration of the works is around 2 weeks at most it means that there is scope for an installed sound level meter continuously monitoring noise levels at Woodlands during the short-term works.

(ii) The specification of an excavator with a lower sound power level is a realistic and enforceable option. RS pointing out: *"there are numerous excavators of this type on the market."*

(iii) Ensuring that the Mineral is extracted from south to north with the excavator noise source therefore lower at the nearest point to Woodlands and benefitting from attenuation from the working face of the excavation.

60. Overall, the final position in respect of the noise issue is:

(a) Following the proposed alterations to the bunding[35], site noise limits for routine operations including those at Woodlands result in levels no more than 10 dB(A) above background at all receptors throughout the life of the development

(b) As Woodlands is recognised as being of "*high*" sensitivity once the mitigation (temporary and then bunding) is in place the amenity of the external areas will be adequately protected;

(c) The proposed temporary barrier for the mineral extraction phase and the proposed bund location address the concerns over the short-term operations and allow for mineral extraction prior to bund construction[36]. There is no proper justification for a stand-off distance when levels can be achieved. The Ware Park IR and SoS decision letter[37] at paragraph IR 394/395 references separation distances with Inspector Woolcock expressing a lack of confidence that the proposal would not result in adverse noise impact at times. But to be useful as a proxy for a precedent that case would have to be shown to be analogous and it is impossible on reading the decision

[35] CD 12.23.
[36] ID 15
[37] CD 8.02

letter to determine the length of time potential exposure in that case compared to the short campaigns in this case. Importantly, RS deals with worst case scenarios in the assessment not routine operations.

(d) Even with the suggested noise limit for short-term temporary operations of up to 70 dB LAeq,1h advice in PPG (Minerals) this is an upper limit and does not mean that noise levels from operations on the Site will be of that magnitude.

(e) In any event, it would also have to be recognised that any noise relating to these temporary operations will take place only over a very limited period. Paragraph 223 of NPPF recognises:

> "*When developing noise limits recognise that some noisy short-term activities, which may otherwise be regarded as unacceptable, are unavoidable to facilitate minerals extraction.*"

Dust/Air Quality

61. Deposition dust is not regulated as a pollutant under any air quality regulations and there are no UK statutory or recommended levels that define the point at which deposited dust causes annoyance or disamenity. The review controls of soiling and annoyance impacts are typically achieved through conditions with planning permissions or Environmental Permits requiring the implementation of a Dust Management Plan. Paragraph 187 of NPPF states:

> "*Planning policies and decisions should contribute and enhance the natural and local environment by […] preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality.*"

62. Policy recognises that a balance needs to be made. Any adverse effects do not warrant the refusal of planning permission.

63. The Regulation 25 Request for Further Information was received from LCC[38] and a submission of supplementary information was submitted on behalf of the Appellant[39] including a section on air quality and an updated AQA[40].

64. Whilst there was no separate review of the updated AQA, Atkins on behalf of LCC addressed the original AQA in advising LCC[41]. The review did not conclude that the proposal would result in unacceptable impacts, significant effects or recommend refusal. It recommended that the Applicant be required to prepare a Dust Management Plan to be submitted to LCC for approval. This response is only credible if there was not an in-principle concern. In the evidence of KH, a DMP is proposed.

65. An Environmental Permit controlled by the Environment Agency would be required to undertake the infilling operations as part of the restoration proposals and this will involve control of dust. No comments or objections were raised in the EA response in relation to dust and/or air quality. Table 4.1 of the evidence of KH[42] sets out the individual properties closest to the AS and these will be those to be protected in the application of the DMP

Dust Assessment: Disamenity

66. The ES updated response addressed the potential sources of dust and the level of impacts[43] including all relevant activities generating dust. KH has undertaken separate assessments for site working activities for all wind speed conditions and stockpiles/exposed areas for wind speed conditions of greater than 5 m/s. The potential receptors were those specified by LCC in its EIA scoping opinion[44] of August 2022 and the residential properties nearest to the site.

67. The dust impact risk considers the significant *"in-design"* mitigation measures that are to be incorporated within the development[45]. This therefore addresses both the measures that affect the source emissions (for example, the inherent moisture content of excavated material) along with factors affecting the pathway effectiveness (eg, bunding). The additional

[38] CD 3.01.
[39] CD 3.02.
[40] CD 3.06.
[41] CD 2.07 – CD 2.11.
[42] KH PoE 23/152.
[43] CD 3.06
[44] CD 1.10.
[45] Ex in C and Xx of KH

operational and management mitigation measures that would be applied are not considered at this stage. The greatest risk of dust deposition would occur at initial soil stripping and near-surface activities. The maximum resulting dust effect at any receptor with designed-in mitigation measures can be recorded as "*moderate adverse*" due to site operations and exposed surfaces during the initial site preparation phases and latter stages of the subsequent restoration. This falls to a maximum effect at the receptor of "*slight adverse*" during the subsequent extraction and restoration operations.

68. As ME acknowledged in his Rebuttal KH's qualitative assessment better represents subjective risks from the proposed activities. Importantly, then as ME accepted[46] the phasing nature of the proposals would ensure that soil stripping is not occurring in one phase close to property boundaries whilst extraction or restoration is occurring in another phase close to the property boundary. KH also makes the point that any impact is similar to those that may be experienced during agricultural activities or other construction typologies[47] and it will be noted that her evidence on this point was not challenged.

69. This was the subject of Xx of KH concerning the effect of the findings. As was explained there is no IAQM guidance on the descriptions of impact or measurable range of the categories. It is a question of judgment for the expert – in KH's view *"slight adverse"* is not "word soup" but is a range of judgments based on considerable expertise and experience that is an effect but not one that would be such as to interfere with use and enjoyment of the property. ME on behalf of LCC had no difficulty with the expressions used or their meaning as appears from paragraphs 6 and 7 of the Rebuttal PoE that addresses the KH evidence:

> *"… The conclusions are that that '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.*
>
> *7. This is in agreement with the position presented in my own PoE that dust emissions from mineral excavation and restoration activities will have the greatest impact at receptors within 100m, especially those closest to dust emissions sources."*

[46] ME Xx
[47] KH PoE 5.5.4 42/152.

70. A degree of dust mitigation will be part of normal working practices and that dust emissions can be controlled through effective site management included in a DMP. Inert waste materials would be regulated by the EA under an Environmental Permit. A draft DMP is provided in Appendix KEH 11 informed by the assessment conducted in the evidence. The principles of the DMP mitigation measures include the following:

(i) Responsibility for the management and control of dust would lie with the Site Manager of the AS.

(ii) Operations would be modified or suspended with effective dust control measures implemented.

(iii) Prevailing site conditions and weather forecast for the day would be reviewed by the Site Manager prior to the start of activities to identify any requirements.

(iv) Additional inspections to be undertaken during the day as necessary.

71. Furthermore, the maintenance of internal roads, the limitation of vehicle speeds and the provision of dust suppression would be employed in accordance with standard good practice. "*Standard measures"* would be employed including monitoring, minimisation of drop heights at loading/unloading, avoiding operations during dry and windy conditions, dust suppression by bowser in dry conditions, regular maintenance of plant, provision of staff training and maintenance of a complaints log and response procedure.

72. There is nothing unusual or exceptional about the proposed DMP in this particular case. The draft DMP includes for regular formal review enabling the updating and/or amending of the DMP in response to any changes in circumstances potentially requiring additional air quality/dust mitigation measures to ensure that it remains robust and effective.

73. Overall, the maximum residual adverse effect is "*slight*" in the proximity of the as-raised stockpile. The stockpile would be worked throughout the year and damping down the stockpiles may be done as necessary during periods of prolonged dry and windy weather as set out in the draft DMP. On the assessment of significance[48], the in-design mitigation and additional management and operational mitigation measures set out in a DMP, no

[48] KH PoE 5.6.1 43/152.

unacceptable impacts or resulting effects on amenity have been identified with the resulting significance of disamenity effects from dust emissions being "*not significant*".

Air Quality

74. KH[49] sets out the available data for 2026 (1 km grid squares) where the AS and nearby receptors are located. This shows that concentrations of PM_{10} and $PM_{2.5}$ are substantially below the relevant objectives and are predicted to fall slightly over time.

75. She explains in the PoE[50] that the Rule 6 monitoring data is of only limited utility. In respect of PM_{10} KH references the IAQM Guidance on Mineral Dust[51] that where the concentration is less than 17 µg/m^3 there is little risk that additional contributions from a mineral site would lead to an exceedance of the annual mean air quality objective. This approach is, of itself, highly conservative. The DEFRA data predicts annual mean background concentrations of 8.47 – 9.61 µg/m^3 in the locality of the AS that is well below the recommended screening value of 17 µg/m^3. The points in relation to deposition dust would apply in relation to the likelihood of the generation of $PM_{2.5}$ in the development. The predicted background $PM_{2.5}$ concentrations in the area are well below all the future targets at 4.77 – 5.39 µg/m^3, being at or near 50% of the most stringent target of 10 µg/m^3. Even if one were to assume 1.5 µg/m^3 to background concentrations, the total annual mean $PM_{2.5}$ concentrations remain well below the targets. The mitigation that would be proposed to deal with dust mitigation and fugitive dust emissions would also serve to reduce the potential of PM_{10} and $PM_{2.5}$ emissions.

Health

76. This is not a RfR as set out in the overarching Statement of Common Ground[52].

77. Respirable Crystalline Silica ("RCS") and risk associated with it is known to be greatest for construction workers working on materials that contain higher quantities of silica with the greatest risk to workers in enclosed environments. There are no established or recommended standards in the UK for RCS in ambient to air. The outlined mitigation measures provided in the draft DMP would reduce dust, PM_{10} and $PM_{2.5}$ and also any potential RCS emissions. There

[49] Table 6.1, KH PoE 45/152.
[50] KH PoE para.6.1.14, 47/152.
[51] CD 12.11 – Section 5.2.
[52] SoCG page 18

is no evidence that the proposed development would pose a potential significant risk to the local population due to RCS[53].

78. The concerns raised by the Rule 6 party about air quality and impact on human health is addressed in the Technical Note prepared by Dr Andrew Boroni that appears as Appendix KEH12.

79. Dr Boroni makes the point that the potential air quality hazards are well-known, understood and addressed through regulatory assessment process that is protective of health[54] and assuming an outrageous worst case he states: *it is still not possible to quantify any, let alone any significant, change in local health outcome."*[55]

80. The written answers to the R6 Party questions on health were dealt with in Dr Buroni's response ID 36 that comprehensively deals with the potential for health risks. In short, there is no basis to consider that the proposal would present any risk to health of the local community.

(d) Planning Policy and Balance

Development Plan

81. The adopted Minerals Planning Framework in Lancashire consists of (i) Core Strategy DPD (adopted 2009) (ii) Site Allocations and DMPs - Part 1 (adopted 2013) and (iii) Site Allocations and DMPs - Part 2 (adopted 2013). All these documents were intended to cover the Plan period to 2021. It therefore follows that the adopted Plan is both time expired and significantly more than five years old.

82. As an overview, the policies of the Minerals Statutory Development Plan do not meet up-to-date guidance or identify sufficient sites in order to meet up-to-date needs for sand and gravel. There is nothing before this Public Inquiry with reference to up-to-date policies and assessment of need of minerals and waste. There is no emerging Local Plan to which any weight can be given.

[53] KH PoE para.7.2.17, 57/152.
[54] Paragraph 2.6.6, 116/152.
[55] Paragraph 2.6.14

83. In the view of LT, the "*tilted balance*" is engaged and the policies are "*out-of-date*". RS (LCC) agrees[56].

84. Some comments on the existing Development Plan are worthy of note in the context of assessing the application of the "*tilted balance*":

(a) The Core Strategy DPD (2009) Policy CS3[57] sets out minerals provision to be made between 2001-2021. The figures are outdated. Policy CS4 anticipates that preferred areas would be identified for the extraction of not less than 4.1 MT of sand and gravel by 2021.

In terms of waste, Policy CS8 is time-limited until 2021. It is noteworthy that nevertheless the AS will provide phased capacity for the use of inert waste and facilitate and enable backfilling, reclamation and restoration of sand and gravel working areas.

(b) The Site Allocations and Development Management Policies - Part 1 (adopted 2013)[58] sets out that Policy 1 development will not be supported for any new extraction of sand and gravel. This policy is out-of-date and can attract little or no weight. It is not compliant with NPPF and is based on supply figures pre-dating 2013.

Need for Sand and Gravel

85. This has been addressed earlier in these submissions.

86. Once Runshaw Quarry is removed, the County Council has only 0.2 MT of the permitted reserves which having regard to the 10 year average sales rates equating to a 0.5 year land bank.

87. AS LT points out in his evidence[59], economic activity is expected to increase during the period 2021-2036, especially the area housing forecast. A higher than previous annual requirement for residential development will correspondingly produce an increased annual requirement

[56] Ex in C and Xx of RS
[57] CD 7.01.
[58] CD 7.02.
[59] LT PoE 20/64 et seq.

for sand and gravel. The LAA[60] and the forecast housing need states that a higher annual apportionment of 570,000 tonnes per annum is required.

88. Since the LAA future housing demand and the update in December 2024 of NPPF marks an increased need for housing across Lancashire. Within Wyre Council alone the annual requirement has increased from 200 dpa to 582 dpa.

89. LT draws attention to the Hamble Airfield appeal decision[61] where the Mineral Products Association figure of a new house requiring on average around 200 tonnes of aggregates and associated mineral products means in the context of an additional 2,824 dpa housing requirement across Lancashire would result in a total demand aggregate increase of up to 564,800 tonnes each and every year over and above existing demand. As LT points out:

> "*Importing all of this aggregate into the County is the antithesis of sustainable development.*"[62]

Locational and Sustainability Benefits

90. The AS is located close to the settlements of Fleetwood, Thornton, Cleveleys and Poulton-le-Fylde and as such, the AS is within close to the areas of planned growth within Wyre as well to Blackpool with a 585 dpa requirement (nearly a 300% increase) and Preston 590 dpa (nearly a 120% increase).

91. The majority of current supply for Lancashire comes from Cheshire about 110 km south of Wyre District[63]. The AS would reduce travel distance by 85 km (each way). The outturn would be a significant reduction in CO_2 over the lifespan of the minerals development and a total CO_2 reduction of 1,912 tonnes may be achieved[64].

Waste

92. The need for further waste disposal capacity has been addressed earlier in these submissions.

[60] CD 7.05.
[61] CD 8.08.
[62] LT PoE para.4.3.5, 21/64.
[63] LT PoE para.4.4.6, 23/64.
[64] LT PoE para.4.4.8, 23/64.

93. The final form of the proposed restoration will be determined at the discharge of condition stage. It is not intended to involve significant land-raising, but will be such as to facilitate an agricultural after-use.

Locational and Sustainability Benefits

94. Figure 5.1 in the evidence of LT[65] identifies locations of inert waste recovery/landfill sites in Lancashire. They are clustered in the vicinity of Preston, Chorley and Blackburn. The Appeal Site would be particularly well located because of it is close to the local towns the and the 220,000 m^3 of capacity within the Appeal Site would be a sustainable destination for these areas. The AS would provide the only inert waste recovery operation north of Preston to serve the entire mid-north Lancashire market.

Planning Balance

95. In terms of compliance with the broad policies of the Statutory Development Plan, it is to be noted that the Site Allocation and Development Management Policies DPD includes a policy that mirrors the NPPF "*tilted balance*" therefore the scheme is acceptable and accords with the Development Plan in its entirety. This includes the Minerals and Waste Local Plan policies that are considered out-of-date. Therefore, where there are no impacts which would "*significantly and demonstrably outweigh the benefits*" the proposed development is consistent with and supported by the principles of NPPF insofar as they are embedded in the Statutory Development Plan policy.

96. The policies cited in the RfR in this case are criteria-based policies that require a judgment on the evidence in order to determine whether there is compliance.

97. In terms of amenity aspects for both noise and dust emissions, the submitted assessment is compliant with local planning policy and national guidance, is supported by relevant information that is sufficiently protective of local amenity as to not conflict with the policies cited.

[65] LT PoE 29/64.

98. Overall, the evidence of KH and RS demonstrates that with the incorporation of appropriate mitigation the proposed development complies with the relevant national and local planning policies in relation to dust, noise and air quality.

99. There are positive benefits to be placed in the planning balance. Great weight is to be attached to the mineral component of the development[66]. Substantial weight would also be appropriate to be given to the sand and gravel when the existing reserves demonstrate a profound shortfall in supply. There is no vehicle that is identified by LCC as an alternative source of supply. The only means by which a supply is likely to be brought forward is through planning permissions granted on individual applications.

100. In addition, there will be employment and economic benefits associated with nine full-time employees at the Site.

101. Overall, it can be concluded that the benefits resulting from this development are substantial, wide reaching and subsist beyond the life of the extraction and infilling stage. From an ecological/biodiversity perspective it is clear that the proposal provides significant betterment with the scheme has also sought to offer biodiversity benefits and enhanced access.

102. Drawing the threads together, the appeal proposal in the policy context is as follows:

(a) The Local Plan is out-of-date with no prospect of an emerging Local Plan in the foreseeable future. This is inconsistent with the longstanding exhortation in NPPF for a Plan-led system.

(b) Great weight is to be given to the benefits of mineral development. This requires the application of great weight in the decision not merely a reference to it.

(c) There is an urgent need for the release of mineral reserves within Lancashire.

(d) The Appeal Site would contribute to the supply by an additional 100,000 tonnes per annum for five years in circumstances where the need will further increase as a consequence of the requirements for additional housing delivery.

[66] NPPF para. 224

(e) The AS is in a sustainable location to meet need.

(f) Additional void space is required for inert materials within Lancashire and the AS is in close proximity to a number of settlements where growth is planned.

(g) The benefits will extend beyond the working life of the quarry and its restoration.

(h) Concerns in relation to amenity impacts can be appropriately mitigated through planning conditions that prescribe noise limits, and compliance with the DMP.

(i) Overall, the appeal scheme is acceptable in accordance with the Development Plan in its entirety, accords with the NPPF and there are no adverse impacts – individually or cumulatively - that would "*significantly and demonstrably outweigh the benefits*".

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