Neutral Citation Number: [2020] EWHC 33 (Admin)

Case No: CO/2517/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/01/2020

Before :

MR JUSTICE STUART-SMITH

- -

Between :

THE QUEEN **(on the application of ISABEL HADEN)**	**Claimant**
- and -	
SHROPSHIRE COUNCIL	**Defendant**
- and –	
JPE HOLDING LTD	**Interested Party**

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Heather Sargent (instructed by **Richard Buxton & Co**) for the **Claimant**
Nina Pindham (instructed by **Legal and Democratic Services Department of Shropshire Council**) for the **Defendant**
David Hardy (solicitor advocate) (instructed by **JPE Holdings Ltd**) for the **Interested Party**

Hearing dates: 17th and 18th December 2019

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Approved Judgment

Stuart-Smith J :

1. The Claimant seeks judicial review of the decision of Shropshire Council ("the Council") dated 17 May 2019 ("the Decision") to grant the Applicant (which is now the Interested Party in these proceedings) planning permission for a development on land near Shipley, Bridgnorth Road, Shipley, Shropshire ("the Site"). The permission was for:

> "The phased extraction of sand and gravel, inclusive of mineral processing, all ancillary works, equipment and associated infrastructure and progressive restoration" ("the Development").

2. The Claimant contends that the Decision is unlawful on four grounds:

   i) The Council breached reg. 3(4) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011;

   ii) The Council failed to satisfy the legal requirements in relation to the statutory development plan;

   iii) The Council erred in law in relation to the Green Belt; and

   iv) The Council erred in law in relation to air quality / dust.

3. By Order dated 10 September 2019 Sir Ross Cranston (sitting as a High Court Judge) granted permission on Grounds 1 and 2 but refused permission on Grounds 3 and 4. The Claimant has renewed her application for permission in respect of Grounds 3 and 4.

Factual Background

4. The Site comprises 44.53ha of agricultural land in the Green Belt. The Development comprises the phased extraction, processing and export from the Site of c. 3.5 million tonnes of saleable sand and gravel aggregate. The total amount excavated will be 4.13mt but this will be reduced by mineral processing. The mineral will be exported from the Site at an average annual rate of about 250,000 tonnes. Mineral production will last for a period of about 14 years, with an initial preparatory period of up to one year and a final restoration period lasting about two years. Initial works will include the formation of screening mounds around the periphery of the Site. The equipment used at the Site will primarily consist of long-arm excavators, backacters, front-loaders, articulated trucks, static wash plant and mobile mineral processing plant; possibly also a conveyor for transporting material across the Site. When operational, the Development is likely to result in an average of about 96 individual HGV movements (48 return movements) per operational day.

5. Under the proposal, the Site is subdivided with extraction and restoration taking place in phases. After extraction has finished, the Site will be restored progressively to a combination of agricultural land, with nature conservation interest and enhanced habitat diversity including species rich grassland, acid grassland/heath mosaic and woodland. The amount of best and most versatile agricultural land would remain unchanged. No

importation of material would be required. The changes effected by the extraction will be very largely reversible. The restoration is to mimic the current lie of the land. Although there will be some permanent change to the landform, it will only be apparent at local level, not least because of peripheral planting and bunding such as is now typical for mineral extraction sites.

6. The Council received the Interested Party's application for planning permission for the Development ("the Application") on 1 November 2017. An officer's report to the Council's South Planning Committee ("the Committee") was prepared, which recommended that planning permission for the Development be granted, subject to the imposition of planning conditions and the completion of a s. 106 agreement.

7. The Committee considered the Application on 25 September 2018. It resolved that planning permission should be granted, subject to the imposition of planning conditions and the completion of a s. 106 agreement. The s. 106 agreement was completed on 17 May 2019 and planning permission for the Development ("the Permission") was granted on the same day.

Ground 1: breach of the 2011 Regulations

The Legal Framework

The 2011 Regulations

8. It is common ground that the applicable regulations are The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 ("the 2011 Regulations").

9. Regulation 3(4) provides that:

> "The relevant planning authority … shall not grant planning permission … pursuant to an application to which this regulation applies unless they have first taken the environmental information into consideration … ."

10. "Environmental information" was defined by reg. 2(1) as meaning:

> "the environmental statement, including any further information and any other information, any representations made by any body required by these Regulations to be invited to make representations, and any representations duly made by any other person about the environmental effects of the development"

The "environmental statement" was defined by reg. 2(1) as meaning:

> "a statement-
>
> (a) that includes such of the information referred to in Part 1 of Schedule 4 as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but

> (b) that includes at least the information referred to in Part 2 of Schedule 4; ..."

11. Part 1 of Sch. 4 included the following:

> "...
>
> 3. A description of the aspects of the environment likely to be significantly affected by the development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.
>
> 4. A description of the likely significant effects of the development on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the development, resulting from—
>
> (a) the existence of the development;
>
> (b) the use of natural resources;
>
> (c) the emission of pollutants, the creation of nuisances and the elimination of waste,
>
> and the description by the applicant or appellant of the forecasting methods used to assess the effects on the environment.
>
> 5. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment..."

12. Part 2 of Sch. 4 included the following:

> "...
>
> 2. A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects.
>
> The data required to identify and assess the main effects which the development is likely to have on the environment..."

13. The net result of these provisions is that the Environmental Statement must include the information referred to in Part 2 of Schedule 4 without the "reasonable requirement" qualification which applies to information that falls within Part 1 but not Part 2 of Schedule 4. The second point to note is that paragraphs 3, 4, and 5 of Part 1 are concerned with "significant effects" that are "likely", while paragraphs 2 and 3 of Part 2 are concerned with "significant adverse affects", and "main effects" which the development is "likely" to have on the environment.

14. The Claimants rely upon the decision of Harrison J in *R (ex p. Hardy) v Cornwall County Council* [2001] Env LR 25. There is little between the parties on the main principle to be derived from *Hardy*. It is encapsulated at [56] where Harrison J said:

> "it is for the relevant planning authority to judge the adequacy of the environmental information, subject of course to review by the courts on the normal *Wednesbury* principles, but information that is capable of meeting the requirements of Part II of Schedule 4 to the Regulations must be provided and considered by the planning authority before planning permission is granted."

15. On the facts of *Hardy*, the outstanding information related to the protection of roosting or resting bats, which were subject to strict protection under the Habitats Directive. The Council decided that further surveys were required to see whether or not roosting or resting bats were present; but instead of requiring those surveys to be carried out before the issue of permission was determined, it granted permission and made it a condition that the surveys be carried out and appropriate mitigation measures be prepared. With compelling logic, Harrison J said at [61]-[62]:

> "61. … The respondent concluded that those surveys should be carried out. They could only have concluded that those surveys should be carried out if they thought that bats or their resting places might, or were likely, to be found in the mine shafts. If their presence were found by the surveys and if it were found that they were likely to be adversely affected by the proposed development, it is, in my view, an inescapable conclusion, having regard to the system of strict protection for these European protected species, that such a finding would constitute a "significant adverse effect" and a "main effect" within the meaning of paragraphs 2 and 3 of Part II of Schedule 4 to the Regulations, with the result that the information required by those two paragraphs would have to be contained in the environmental statement and considered by the Planning Committee before deciding whether to grant planning permission.
>
> 62. Having decided that those surveys should be carried out, the Planning Committee simply were not in a position to conclude that there were no significant nature conservation issues until they had the results of the surveys. The surveys may have revealed significant adverse effects on the bats or their resting places in which case measures to deal with those effects would have had to be included in the environmental statement. They could not be left to the reserved matters stage when the same requirements for publicity and consultation do not apply. Having decided that the surveys should be carried out, it was, in my view, incumbent on the respondent to await the results of the surveys before deciding whether to grant planning permission so as to ensure that they had the full environmental information before them before deciding whether or not planning permission should be granted."

16. This passage provides a good illustration of how the principle set out at [14] above may work in practice. It does not, to my mind, add any new or additional principle. It is merely the working out of a factual conclusion that the requirements of Part II of Schedule 4 had not been satisfied. The grant of planning permission was therefore quashed. The judgment makes clear that the decision whether outstanding information falls within the ambit of either Part I or Part II of Schedule 4 will always be intensely fact sensitive: see [65] where the distinction is drawn between outstanding information relating to bats on the one hand and badgers or liverwort on the other.

17. The first question in every case is whether the Council could rationally conclude that the outstanding aspects did not amount to "significant adverse effects" or "main effects". If they did or could amount to "significant adverse effects" or "main effects" the next question would be whether the Council could rationally conclude that those significant or main effects were not likely. These questions flow directly from the terms of Schedule 4; and see *Hardy* at [58].

18. Although arising in slightly different circumstances, two statements of principle from *R (Jones) v Mansfield DC* [2003] EWCA Civ 1408 show the approach to be taken to the question whether a development is likely to have significant effects on the environment. At [17] Dyson LJ (with whom Carnwath LJ agreed) said:

> "Whether a proposed development is likely to have significant effects on the environment involves an exercise of judgment or opinion. It is not a question of hard fact to which there can only be one possible correct answer in any given case. The use of the word "opinion" in regulation 2(2) is, therefore, entirely apt. In my view, that is in itself a sufficient reason for concluding that the role of the court should be limited to one of review on Wednesbury grounds."

19. At [38]-[39] he said:

> "38.. … It is clear that a planning authority cannot rely on conditions and undertakings as a surrogate for the EIA process. It cannot conclude that a development is unlikely to have significant effects on the environment simply because all such effects are likely to be eliminated by measures that will be carried out by the developer pursuant to conditions and/or undertakings. But the question whether a project is likely to have significant effect on the environment is one of degree which calls for the exercise of judgment. Thus, remedial measures contemplated by conditions and/or undertakings can be taken into account to a certain extent (see *Gillespie*). The effect on the environment must be "significant". Significance in this context is not a hard-edged concept: as I have said, the assessment of what is significant involves the exercise of judgment.
>
> 39.. I accept that the authority must have sufficient information about the impact of the project to be able to make an informed judgment as to whether it is likely to have a significant effect on the environment. But this does not mean that all uncertainties

> have to be resolved or that a decision that an EIA is not required can only be made after a detailed and comprehensive assessment has been made of every aspect of the matter. As the judge said, the uncertainties may or may not make it impossible reasonably to conclude that there is no likelihood of significant environmental effect. It is possible in principle to have sufficient information to enable a decision reasonably to be made as to the likelihood of significant environmental effects even if certain details are not known and further surveys are to be undertaken. Everything depends on the circumstances of the individual case."

Officers' Reports

20. Lindblom LJ's convenient summary of "the well settled principles" at [41]-[42] of *Mansell v Tonbridge and Malling BC* [2017] EWCA Civ 1314 is sufficient for present purposes and does not need to be set out again in full. The guidance that Officers' Reports "are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge" and the guiding criteria that "minor and inconsequential errors may be excused" and that "it is only if the advice in the officer's report is such as to misdirect the members in a material way – so that, but for the flawed advice it was given, the committee's decision would or might have been different" are to be borne in mind at all times.

21. In addition, I note with respectful agreement the observation of Andrews J in *Pagham Parish Council v Arun District Council and Langmead* [2019] EWHC 1721 (Admin) at [33] that the Court should resort to good sense and fairness and should not adopt a hypercritical approach.

The Submissions

22. The Claimant submits that, in failing to require further hydrological assessment before granting the Permission, the Council breached regulation 3(4) of the 2011 Regulations. It submits that on a proper understanding of observations made by the Environment Agency the Council should have decided that there was inadequate evidence upon which to conclude that significant effects were not likely; and that, if it was going to disagree with the Environment Agency, it had to give cogent reasons, relying upon *R (Prideaux) v Buckinghamshire County Council* [2013] EWHC 1054 Admin at [116].

23. The Council and the Applicant submit that there was ample evidence upon the basis of which the Council was entitled to and did conclude that there was no likely significant effect that required further assessment to be carried out and that proper provision was made for future contingencies by conditions, the true purpose of which was to provide reassurance in the event that any adverse effects eventuated.

Factual Background and determination of Ground 1

24. The information in respect of hydrology/hydrogeology that was before the Committee in making the Decision included the following:

    i) The environmental statement ("ES") dated 17 November 2017;

ii) Two reports prepared by Caulmert on behalf of the Interested Party, dated May 2018 and July 2018;

iii) A response to a Regulation 25 request for further information dated 31 May 2018;

iv) A report prepared by Stephen Buss on behalf of an objector, dated 6 September 2018 ("the Buss Report"); and

v) Consultation responses from the Environment Agency ("the EA") dated 15 December 2017, 13 August 2018 and 17 September 2018.

25. The relevant section of the ES reported on a study area comprising the Site, the groundwater and surface water environment located within a c. 2 km radius of the centre of the Site, geological information located within 500m of the Site's boundary, and private water supplies within c. 2 km of the Site. It addressed the existence of an aquifer below the level of proposed extractions and the existence of localised perched water strikes. It recorded that there was broad agreement with the Environment Agency (based on pre-application discussions) that the baseline information available for the Site was relatively extensive and that "the Proposed Development could be designed to avoid the potential for significant adverse effects on the water environment"; and, elsewhere, it reported that "the available hydrological and hydrogeological baseline for the Site has enabled the Proposed Development to be designed in order to avoid impacts from the proposals on the Water Environment": see [9.5.2.1]. In the section headed "Perched Water" it reviewed the evidence from borehole logs and stated that the evidence from the borehole logs "indicates that any perched water strikes are as a result of localised geological conditions, not uniform throughout the Site, whereby natural percolation through the strata is slightly impeded not replicated throughout most of the geology." It concluded that "there is no evidence to indicate that any of the perched water would be significantly productive or a significant water resource": see [9.4.4.13]-[9.4.4.19]. The gist of the report was summarised in the conclusion section at [9.7.1.1]: "At each stage of the development, the overall risks are considered to be low. Therefore the Proposed Development is not expected to pose a risk to groundwater quality or groundwater levels/flows at the Site or in the aquifer around the Site. No significant adverse effects are predicted, and would not pose a constraint to development."

26. The Environment Agency's first response was dated 15 December 2017 and contained a section on "Potential Impact upon shallow/perched water table". It recorded the opinion expressed in the ES that "as the site will not be wet worked and only perched water is likely to be affected by quarry activities the potential risk to local groundwater abstractions is consider [sic] to be minimal (low risk)", but it questioned whether the ES's conclusions were sufficiently robust given the possible presence of unlawful abstractions. The passage in full read:

> **"Potential Impact upon shallow/perched water table.**
>
> Your EIA scoping letter identifies the need to consider possible drawdown effects in any shallow/ perched water tables, spring lines etc. The ES confirms that as the site will not be wet worked and only perched water is likely to be affected by the quarry

> activities the potential risk to groundwater abstractions is consider [sic] to be minimal (low risk).
>
> While the report has confirmed consultation with your Council for the private water supply records, it is not clear to what extent local residents have been contacted with regard to possible unlicensed abstractions, to support the above conclusion.
>
> Given the concerns raised by local residents during public consultation and following a review of the information submitted, we would recommend that a water features survey be completed to consider all such possible abstractions (and any water features) located within a 1km radius of the excavation. This will inform a more robust EIA. These should be identified and detail sought to establish whether the abstraction is situated within the shallower Secondary aquifer or deeper Principle aquifer. The data obtained should be used to revise the Conceptual Site Model and hydrogeological impact assessment where necessary. This will inform the final ES conclusion.
>
> Particular concerns were raised by a local resident about spring-fed fish ponds and pools at Shipley Hall and Grange Farm to the south-west, therefore more detailed comments should be made by the applicant regarding the potential risk of derogation of these springs which are within the proposed working depth of the quarry.
>
> Further information should be provided to confirm the risk and any avoidance/mitigation measures, including agreement for the protection of such supplies where relevant and necessary."

27. The Applicant responded by providing what has been called the First Caulmert Report. It addressed the issues that had been raised by the Environment Agency on the basis of further analysis and investigations. It concluded that known incidents of water abstraction were from the principal aquifer (and therefore not liable to be dependent upon perched water supplies). In relation to the springs at Grange Farm it acknowledged that the source of the water in the springs was unknown but gave cogent reasons, applying the precautionary principle, for thinking that the excavations would not affect them. Similarly it provided cogent reasons for thinking that the excavations would not affect the ponds and pools at Shipley Hall. The gist of its conclusions appears from the last paragraph – [4.1.5] -, which stated:

> "In conclusion, from the available evidence presented above, it is considered that the proposed development (as amended) is unlikely to have a significant impact on the water features identified as part of this review. … Overall the associated environmental risks to groundwater flows and quality in relation to nearby water abstractions are considered to remain very low."

28. On 31 May 2018 the applicant responded to the Defendant's Regulation 25 request, which was dated 15 March 2018. In relation to water features it referred to and relied

upon the review by Caulmert. It reiterated the conclusion that the Proposed Development was unlikely to have any significant impact on the existing water features that had been identified.

29. In July 2018, Caulmert provided an addendum report to provide clarifications in response to informal queries raised by the Environment Agency arising out of the First Caulmert Report. As well as addressing the specific queries it stated that:

> "2.9.7 Whilst no substantial interrelationship has been assessed and the Proposed Development is not predicted to have any significant adverse effects in relation to localised water features, as recommended, there is a commitment for a groundwater/water monitoring program to be undertaken throughout the life of operations. This can be secured via planning conditions/agreement."

And concluded that:

> "3.1.2 The assessments have indicated that the perched water represents very localised pockets of groundwater with very limited correlation between the borehole logs. Therefore the development is unlikely to have an impact in the wider environmental context. The flows and falls to the springs within the Alder Coppice have been maintained within the design.
>
> 3.1.3 The base of the proposed development is above the regional groundwater levels and therefore not considered to impact on flows within this regionally important resource.
>
> 3.1.4 Whilst the proposals are not considered to lead to any significant impacts in relation to groundwater, to account for the local situation, a groundwater/water monitoring program will be undertaken to provide additional confidence in the protection of the groundwater environment. This can be secured via planning condition/agreement."

30. The Environment Agency responded again on 13 August 2018. In order to obtain the full sense of its response, it is necessary to set it out in full rather than attempting merely to paraphrase it. The response was:

> **"Environment Agency Position**
>
> Following a review of the supplementary information, there remains considerable uncertainty as to the spring mechanisms giving rise to the water features identified in the area. The apparent mismatch between some of the observed flows and estimated catchments emphasise this. It is not therefore possible to be fully confident about the potential risks to the water features.

Given that the reported bulk regional groundwater level is recorded at a notable depth below ground level, this would suggest that the springs/ponds rely on the shallow superficial/shallow bedrock perched systems and therefore are potentially more vulnerable to changes in topography, unsaturated zone storage, infiltration travel times/lag times etc, as the quarry makes up the higher ground/recharge area.

It is plausible that changes in the surface water runoff from the site may effect (sic) recharge to the springs even if the groundwater mechanisms themselves are not affected. This is a complex hydrogeological setting and ideally further investigation/monitoring should be undertaken to refine the conceptual model, although even then it is likely that there would remain uncertainty in terms of spring mechanisms/catchments.

To assist the production of a more robust EIA, the applicant should fully identify and confirm the precise nature of the springs flow mechanisms. However, we appreciate that this may be difficult and some doubt might still remain. You might impose a condition/undertaking for monitoring of the identified features (quantity/quality) and a condition/legal agreement to secure mitigation including remediation of any adverse impacts should this be necessary. However we emphasise that as the risk is unclear it is not possible to state with confidence what (if any) necessary mitigation would entail and whether it would be feasible.

In terms of mitigation, the EIA should provide some certainty/commitment on mitigation to ensure no significant effect on the local water environment.

The EIA does not provide any mitigation options to cover 'if' impact is encountered upon private water supplies. It would be for your Public Protection / Private Water Supply protection team to ensure they are satisfied on this and as part of any possible future planning condition discharge, to assist your decision making.

The applicant has proposed installing a number of monitoring boreholes across the development site in order to monitor any impacts on the groundwater system. There should be a commitment to wider monitoring to assist with spring lines/private water supplies. All of the private water supplies (abstractions) identified appear to be outside of our regulation. If impact/derogation was demonstrated/ was to occur, it might be possible to provide a new supply for the affected source.

You might impose a planning condition to secure the details of the locations for boreholes (across the site/any necessity off site) and monitoring programme.

> Based on the information provided and the scale of the proposed development, we consider the potential for adverse impact on the private supplies and the wider water environment is not fully known. Whilst some further detail could be provided some doubt may still remain."

31. After suggesting a condition that would preclude starting the development until a scheme to identify and monitor water features had been submitted and approved which required remediation of any identified adverse risk of deterioration to the water features, the Environment Agency concluded by stating that its previous comments, including those in its letter of 15 December 2017 still stood. As a matter of fact, the Agency's proposed condition was adopted.

32. This response (like its predecessor) was not going so far as to assert that the excavation was likely to have significant effects on the environment. Rather it was saying that, in the opinion of the Environment Agency, there was a lack of assurance or certainty about the relevant spring mechanisms which meant that there was a consequential lack of certainty about whether there would be significant effects. Its position was summarised in the last paragraph set out above: in the opinion of the Environment Agency, the potential for adverse impact on the private supplies and wider water environment was "not fully known." A second point to note is that, *if* the Environment Agency was aware of the principles set out in *Hardy*, its suggested solution of applying conditions to ensure monitoring would have been inappropriate if it considered that the proposals were likely to have significant adverse effects or that there was insufficient information to enable the Council to assess whether or not significant adverse effects were likely.

33. The Buss report explored the potential risks to water features local to the proposed development. It asserted that a robust understanding of the impacts of faulting in the bedrock on groundwater flow was required to assess the risk from quarrying activities. Its conclusions included that the Applicant had failed to present a firm understanding of water supply mechanisms for the spring-fed watercourses in the area; and that the Applicant had failed to show that the ancient woodland to the north of the site would not be affected by interception of perched water tables. Overall, Dr Buss submitted that there was a need to construct several further boreholes on the site and to collect data for at least one year and to quantify flows through key watercourses throughout the year.

34. A further response from the Environment Agency was dated 17 September 2018. It responded to the Buss report and specific questions raised by Dr Buss and set out in the response. Materially for present purposes, the Environment Agency wrote:

> "As confirmed in our previous response, of 13 August 2018, this is a complex hydrogeological setting and ideally further investigation/monitoring should be undertaken to refine the conceptual model, although even then some uncertainty may remain.
>
> We believe that many of the comments made by Stephen Buss support our stance with regard to the spring mechanisms. There remains significant uncertainty about their origins, whether superficial perched, bedrock, 'perched', regional groundwater table supported, or some potentially fault related.

> Based on the reasoning above (generally observation range of water levels in the area to the south/west of the site), we are not certain whether the springs issuing at 108mAOD could be considered to originate from the regional coherent groundwater system. However the potential for compartmentalisation and effects of faulting are unclear.
>
> Whilst it may be possible to infer spring mechanisms from geological mapping, care is required because of the potential inaccuracy of mapping of the superficial deposits. Determination of the potential impact of the quarry upon the springs is not fully possible, because the spring mechanisms are not completely understood. It is therefore not possible to state with confidence whether mitigation measures are required or indeed would be feasible or appropriate.
>
> It is arguable that the necessary site specific monitoring that has been put forward should be undertaken upfront in order to inform the EIA and such mitigation. The monitoring proposed by the applicant does provide the opportunity for greater certainty to be provided and a mechanism for avoidance of potential impact remediation of any derogated suppliers. We would reiterate that it would be for your Council's Public protection and/or Private Water Supply protection team to comment further on this element to ensure they are satisfied with this approach."

35. Once again, the Environment Agency did not express any opinion about whether it considered that significant adverse effects were likely. Nor did it register an objection to the scheme. Instead it referred to further investigation and monitoring as an ideal. What it stated clearly was its opinion that there remained uncertainty about the origins of the spring mechanisms; and that, because of that uncertainty, it was not possible to state with confidence whether mitigation measures were required or would be feasible or appropriate. There is therefore a major ambiguity in the Agency's response because it is not self-evident that mitigation measures would only be required for *likely* significant effects: it would be reasonable for the Agency to propose mitigation measures against a residual risk that was not likely but which would be significant if it occurred, or (perhaps more tenuously) against a residual risk that was likely even if it was not expected to be significant or a main effect.

36. The Environment Agency wrote again on 19 September 2018 offering comments on the conditions then being proposed by the Defendant:

> "Condition 25 details the requirements for further investigation of any potential material changes to local groundwater levels/features and identification of measures to mitigate the risks. Condition 26 limits extraction operations to 109m above ordnance datum unless the hydrological monitoring scheme has confirmed that the extraction below this level would not intercept the permanent groundwater table.

> Whilst we do not disagree with the main content of these conditions, we would reemphasise our concerns regarding the remaining uncertainties in the hydrogeological conceptual model resulting from the absence of site specific monitoring, for your consideration and benefit of the Planning Committee.
>
> The mechanisms that supply the local springs and associated watercourses have not been characterised and consequently the likelihood of potential impacts arising from the quarrying have not been fully assessed. To date no assessment of mitigation measures or their feasibility has been undertaken. Such measures should be considered as soon as possible, (ideally prior to granting of planning permission), as whilst it may be possible to provide mitigation for the loss of a well or borehole, providing a solution for an impact or loss of a spring or associated watercourse is potentially much more complex and may not be feasible. It is therefore essential that the local authority and the applicant are aware that in the instance of an impact occurring, cessation of quarrying may well be required to prevent or limit an impact. This could be included within the condition wording. It is also plausible that at the point any potential impacts are observed they may already be irreversible, particularly in relation to any spring/spring-fed watercourse feature. Mitigation has not been fully explored within the ES, but for impacts to private water supplies it could include provision of alternative supplies potentially including mains water connection at the applicant's cost.
>
> It should also be acknowledged that depending upon the nature of the spring mechanisms/baseflow to watercourses, potential impacts arising from any operations may occur prior to 109mAOD extraction depth being reached.
>
> It is for the above reasons that we have highlighted that it would be preferable to address the lack of site specific data and conceptual uncertainties, including baseline data, prior to grant of planning permission.
>
> If the planning Committee is minded to grant planning permission, we would wish to be formally consulted on information submitted in relation to condition 24 and 25 thereafter to ensure a robust, enforceable scheme."

37. The Claimant relies upon the reference to cessation of quarrying being required in the event of an impact. That shows that the consequences for the Applicant if adverse effects eventuated could be serious; but it says nothing about likelihood. Once again, the Environmental Agency stopped short of saying that it considered significant effects to be likely, limiting itself to repeating that, in its opinion, the likelihood of potential impacts from quarrying had "not been fully assessed." And, once again, it did not object to the proposal but suggested prior monitoring as "preferable".

38. The Officer's Report dealt with this issue at [6.63]-[6.73] which are set out in full in Annex A. It provided a reasonable summary of the evidence that was before the Committee. Prominent in that summary is the ES assessment that the development is unlikely to have an impact in the wider environmental context and that the proposals are not considered to lead to any significant impacts in relation to groundwater: see [6.65]. A reasonably detailed synopsis of the supplementary assessment is provided, with the conclusion that the proposed development (as amended) is not likely to have a significant impact on the identified water features: see [6.66]. These paragraphs provide the context for the summary of the Environment Agency's position that is set out at [6.67-6.68]. That summary is, in my view, reasonable in drawing attention to the fact that the Agency had not lodged an objection but had pointed out that uncertainty about the spring mechanisms means that it is not possible to be "fully confident" about the potential risks to the identified water features. Their recommendation that a condition/legal agreement is imposed to secure mitigation including remediation "of any adverse impacts should this be necessary" is a fair reflection of what the Agency proposed. The Report does not suggest that the Agency's recommendations are inconsistent with the Applicant's evidence that the proposals are not expected to lead to any significant impacts in relation to groundwater – a point to which I will return. Later on, at [6.72] the report faithfully reflects the Agency's language in its August and September 2018 responses where it said that some further monitoring would "ideally" be undertaken to enable the conceptual model to be refined and to assess mitigation measures and their feasibility. Finally, it identifies two prime reasons, namely the availability of an appropriate planning condition and absence of a formal objection from the Agency as leading to the conclusion that refusal could not be substantiated: see [6.73].

39. Viewed overall, and adopting a fair approach to the terms of the Officer's Report, the relevant section can be read as accepting the evidence that development is unlikely to have an impact in the wider environmental context and that the proposals are not considered likely to lead to any significant impacts in relation to groundwater but that any residual risk can be catered for by conditioning. Furthermore, the Officer's Report sets out with reasonable clarity the information that entitled it to reach its conclusion that there was unlikely to be a significant (adverse) impact: see [6.65], [6.66]. That was evidence that it was entitled to take into account and accept, not least because it was not contradicted by the responses from the Environment Agency, whose observations went to the level of assurance. The submission that these observations meant that the Council could not properly conclude that significant adverse effects were not likely is not sustainable, because that is not what the Environment Agency said. Hence there was no inherent contradiction between the position being adopted by the Environment Agency and the conclusion reached by the Council on the basis of its acceptance of the Applicant's evidence; and, to the extent that there was tension between the two, there was material upon which the Council was entitled to rely to support its conclusion. Adopting the criteria set out in [56] of *Hardy* there was information that was capable of meeting the requirements of Part II of Schedule 4, and the assessment of that information cannot be said to have been *Wednesbury* unreasonable.

40. As the passages from *Jones* cited above make clear, it is not necessary for all uncertainty to be resolved in order to achieve compliance with the requirements of Regulation 3(4). In my judgment this was a case that fell within the scope of the Council's entitlement

and obligation to exercise a judgment on the adequacy or otherwise of the available information and it was entitled to conclude both that it had adequate information and that significant adverse consequences were not likely.

41. I place some limited (but not determinative) weight upon the fact that the Environment Agency did not object to the application. I accept that it is possible that those acting for the Environment Agency did not have the principles established by *Hardy* in mind, though that would be surprising given the general level of competence to be expected of the agency and the notoriety of the *Hardy* line of authority. It seems more likely that the position being adopted by the Environment Agency reflected a proper understanding of *Hardy*, with the Agency drawing a proper distinction between questioning levels of assurance, which would not necessarily lead to an objection, and expressing the view that significant adverse effects were likely, which at least *should* have led to an objection. Supporting a regime that would make provision for any residual risk of adverse effects is consistent with this approach. If and to the extent that there was a conflict between the views expressed by the Environment Agency and the conclusion reached by the Council, the Officer's Report provided a sufficiently cogent explanation for the Council's conclusion.

42. For these reasons, the Claimant's challenge on Ground 1 fails.

Ground 2 – Failure to satisfy legal requirements in relation to the statutory development plan

43. The Claimant accepts that this ground is parasitic upon, and stands or falls with Ground 1 because it relies upon the Council's approach to the hydrology issues that formed the basis of criticism under Ground 1. In the light of my conclusions on Ground 1, I can therefore deal with this ground shortly.

44. The status of the development plan as a material consideration and the duty of the Council to have regard to it pursuant to s. 38(6) of the Planning and Compulsory Purchase Act 2004 are not in doubt: see *R (Hampton Bishop Parish Council) v Herefordshire Council* [2014] EWCA Civ 878, [2015] 1 WLR 2367 at [26]-[33]. Here the Claimant asserts a failure to have regard to Core Strategy Policy CS17 and SAMDev Policy MD17.

45. The Claimant accepts that the Officer's Report evidently had these policies in mind. That acceptance is correct because the Report refers to them expressly and concludes that their requirements are met: see [6.2], [6.3], [6.38], [6.51], [6.57] and [7.11]. Furthermore, Conditions 32, 34, 35 and 37 were imposed to comply with policy CS17.

46. It cannot reasonably be argued that the Council's conclusion, having expressly considered the policy provisions upon which the Claimant relies, was irrational or *Wednesbury* unreasonable.

47. The Claimant's challenge on Ground 2 therefore fails.

Ground 3 – Error of law in relation to the Green Belt

Legal Principles

48. NPPF paragraph 146 provides that certain forms of development, of which mineral extraction is one, "are … not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land in it."

49. In *Samuel Smith Old Brewery (Tadcaster) v North Yorkshire County Council* [2018] EWCA Civ 489 Lindblom LJ considered the precursor to paragraph 146 and gave guidance on the interpretation of "preserve its openness":

> "37. The concept of "the openness of the Green Belt" is not defined in paragraph 90. Nor is it defined elsewhere in the NPPF. But I agree with Sales L.J.'s observations in ***Turner*** to the effect that the concept of "openness" as it is used in both paragraph 89 and paragraph 90 must take its meaning from the specific context in which it falls to be applied under the policies in those two paragraphs. Different factors are capable of being relevant to the concept when it is applied to the particular facts of a case. Visual impact, as well as spatial impact, is, as Sales L.J. said, "implicitly part" of it. In a particular case there may or may not be other harmful visual effects apart from harm in visual terms to the openness of the Green Belt. And the absence of other harmful visual effects does not equate to an absence of visual harm to the openness of the Green Belt.
>
> 38. … A realistic assessment will often have to include the likely perceived effects on openness, if any, as well as the spatial effects. Whether, in the individual circumstances of a particular case, there are likely to be visual as well as spatial effects on the openness of the Green Belt, and, if so, whether those effects are likely to be harmful or benign, will be for the decision-maker to judge. But the need for those judgments to be exercised is, in my view, inherent in the policy.
>
> 39. The first part of the question posed by the preamble in paragraph 90 – whether the development would "preserve" the openness of the Green Belt – cannot mean that a proposal can only be regarded as "not inappropriate in Green Belt" if the openness of the Green Belt would be left entirely unchanged. It can only sensibly mean that the effects on openness must not be harmful – understanding the verb "preserve" in the sense of "keep … safe from harm" – rather than "maintain (a state of things)" (Shorter Oxford English Dictionary, 4th edn.). There may be cases in which a proposed development in the Green Belt will have no harmful visual effects on the openness of the Green Belt. Indeed, there may be cases in which development will have no, or no additional, effect on the openness of the Green Belt, either visual or spatial. A good example might be development of the kind envisaged in the fourth category of development

> referred to in paragraph 90 of the NPPF – "the re-use of buildings provided that the buildings are of permanent and substantial construction". But development for "mineral extraction" in the Green Belt, the category of development with which we are concerned, will often have long-lasting visual effects on the openness of the Green Belt, which may be partly or wholly repaired in the restoration phase – or may not. Whether the visual effects of a particular project of mineral working would be such as to harm the openness of the Green Belt is, classically, a matter of planning judgment".

The Submissions

50. The Claimant submits that the Officer's Report erred in two respects:

    i) It is alleged that the Officer approached the question of "preservation" incorrectly because he did so on a mistaken understanding that "specific localised impacts" could not result in a failure to preserve openness. It is alleged that he thereby assumed that only "widespread" impacts could be harmful within the meaning of the policy as explained by Lindblom LJ in *Samuel Smith Old Brewery (Tadcaster)*;

    ii) It is alleged that the Report does not include any discussion of whether the proposed screening measures themselves might have a harmful effect on the openness of the Green Belt.

51. The Council and Applicant respond that this amounts to just the sort of approach deprecated by Andrews J in *Pagham*, to which I have referred above at [21], and that a fair reading of the Officer's Report shows this ground to have no merit.

The Officer's Report and determination of Ground 3

52. Once again it is necessary to view the relevant passages of the Officer's Report in context and in full to reach a fair understanding of what was being said. I therefore attach the relevant passages as Annex B. What follows is only a summary of some salient points.

53. [6.27] and [6.28] set out a correct summary of the relevant principles to be applied by the decision maker. Paragraph 146 of the NPPF (wrongly numbered 147 by an immaterial error) is identified as the material provision. [6.29] addresses the five purposes of the Green Belt identified by paragraph 134 of the NPPF. Most relevantly, in relation to "Test 3", the Report identifies that the changes caused by the proposed development are reversible though there will be some permanent change that is "only apparent at a local level"; and it identifies the ability to support mitigation measures by conditions.

54. [6.30] then provides a reasonable summary of the relevant approach to the concept of "openness", including appropriate references to spatial/physical and visual components. The criticised passage, in its immediate context, is: "A decision maker must determine whether the potential impacts of a proposal on openness would be sufficient to materially undermine the perception of 'openness'. This is as distinct from

identifying specific localised impacts." Even in this limited context, it is apparent that what the Report conveys is the importance of taking a broader look at the potential impacts of a proposal rather than merely cataloguing and assessing specific impacts that might have a local effect but are not necessarily material when viewed in the overall context of a development. It is not saying that specific localised impacts can *never* undermine the perception of openness: it is merely saying that they do not necessarily do so. Looking at the wider context of the terms of the report, this is consistent with the approach taken in the rest of the relevant passages; and, in my judgment, it is a permissible and correct approach. That disposes of the Claimant's first submission in support of Ground 3.

55. The report then follows a coherent and logical structure.

i) [6.31]-[6.33] address visual impacts, identifying evidence that they are not significant. It refers to the bunding and screening and concludes that the end result is typical of the local countryside in terms of character and proposed use; and that any residual effects on landscape and visual amenity would not "result in material impacts to the sense of openness of the Green Belt": see [6.33];

ii) The Report then considers the spatial dimension of openness at [6.34] and expresses the view that "the openness of the site over time will be preserved following the restoration works";

iii) [6.35] then gives separate consideration to the question of amenity. It refers again to the proposed mitigation works and reaches the overall conclusion that the function and sense of openness of the Green Belt would be preserved over time, so that the quarrying proposals are not inappropriate development, having express regard to paragraph 146 of NPPF.

56. The Report refers to the question of Landscape and Visual Impact at [6.58]-[6.59]. It refers at [6.58] to the LVIA conclusion that there would be no significant adverse visual effects after mitigation. [6.59] then refers expressly to the amendment of the scheme to include the 3m bunding and pre-coppiced willow planting about the site. It concludes that: "whilst there would be some residual impacts to landscape and visual amenities these would not be significant and the extent of any such impacts would be limited by the proposed mitigation works. Restoration would deliver benefits in landscape terms. Overall, the residual minor negative impacts would be outweighed by 'great weight' which the NPPF requires to be given to the benefits of mineral extraction, including to the economy (NPPF 205)."

57. While it is correct that the Report does not expressly ask the question whether the proposed screening measures might themselves have a harmful effect on the openness of the Green Belt, a fair reading of the relevant passages makes plain that the Report addresses the question of openness taking into account the screening measures that were proposed and concludes that there was no material residual impact or harm to the openness of the site. For the reasons set out in the relevant passages, that was a planning assessment and judgment which the Council was entitled to reach on the basis of the information available to it, as were the other conclusions expressed in the relevant passages of the Report to which I have referred above.

58. There is no material error in the Report's approach and it is not reasonably arguable that the Committee would have been materially misled by the terms in which it was presented. The Claimant's criticism under this Ground is, in my judgment, based upon an inappropriately hypercritical approach that has no proper part to play in a planning case such as this.

59. In refusing permission on this ground, Sir Ross Cranston said:

> "Ground 3 is not arguable. The Council's decision was based on the planning judgment of an officer with 30 years' experience and previous knowledge of matters such as landscaping bunds and tree screening for mineral excavations. It was entitled to conclude that the impact of the proposal on the openness of the Green Belt would not be harmful when not widespread."

I agree.

60. For these reasons, the renewed application for permission to pursue Ground 3 is refused. The Claimant's proposed challenge under Ground 3 therefore fails.

Ground 4 – Error of law in relation to air quality

Legal Principles

61. S. 149 of the Equality Act 2010 ("*Public sector equality duty*") provides as follows:

> "(1) A public authority must, in the exercise of its functions, have due regard to the need to—
>
> (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
>
> (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
>
> ...
>
> (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
>
> (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
>
> (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

> (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
>
> (4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
>
> ...
>
> (6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.
>
> (7) The relevant protected characteristics are—
>
> …
>
> disability;
>
> …"

62. The principles to be applied when consideration of the public sector equality duty were sufficiently summarised for present purposes by McCombe LJ at [25] of *R (Bracking) v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345, as follows:

> "(1) As stated by Arden LJ in R (Elias) v Secretary of State for Defence [2006] 1 WLR 3213; [2006] EWCA Civ 1293 at [274], equality duties are an integral and important part of the mechanisms for ensuring the fulfilment of the aims of anti-discrimination legislation.
>
> (2) An important evidential element in the demonstration of the discharge of the duty is the recording of the steps taken by the decision maker in seeking to meet the statutory requirements: R (BAPIO Action Ltd) v Secretary of State for the Home Department [2007] EWHC 199 (QB) (Stanley Burnton J (as he then was)).
>
> (3) The relevant duty is upon the Minister or other decision maker personally. What matters is what he or she took into account and what he or she knew. Thus, the Minister or decision maker cannot be taken to know what his or her officials know or what may have been in the minds of officials in proffering their advice: R (National Association of Health Stores) v Department of Health [2005] EWCA Civ 154 at [26 – 27] per Sedley LJ.
>
> (4) A Minister must assess the risk and extent of any adverse impact and the ways in which such risk may be eliminated before the adoption of a proposed

policy and not merely as a 'rearguard action', following a concluded decision: per Moses LJ, sitting as a Judge of the Administrative Court, in Kaur & Shah v LB Ealing [2008] EWHC 2062 (Admin) at [23 – 24].

(5) These and other points were reviewed by Aikens LJ, giving the judgment of the Divisional Court, in R (Brown) v Secretary of State for Work and Pensions [2008] EWHC 3158 (Admin), as follows:

i) The public authority decision maker must be aware of the duty to have 'due regard' to the relevant matters;

ii) The duty must be fulfilled before and at the time when a particular policy is being considered;

iii) The duty must be 'exercised in substance, with rigour, and with an open mind'. It is not a question of 'ticking boxes'; while there is no duty to make express reference to the regard paid to the relevant duty, reference to it and to the relevant criteria reduces the scope for argument;

iv) The duty is non-delegable; and

v) Is a continuing one.

vi) It is good practice for a decision maker to keep records demonstrating consideration of the duty.

(6) '[G]eneral regard to issues of equality is not the same as having specific regard, by way of conscious approach to the statutory criteria.' (per Davis J (as he then was) in R (Meany) v Harlow DC[2009] EWHC 559 (Admin) at [84], approved in this court in R (Bailey) v Brent LBC [2011] EWCA Civ 1586 at [74–75].)

(7) Officials reporting to or advising Ministers/other public authority decision makers, on matters material to the discharge of the duty, must not merely tell the Minister/decision maker what he/she wants to hear but they have to be 'rigorous in both enquiring and reporting to them': R (Domb) v Hammersmith & Fulham LBC [2009] EWCA Civ 941 at [79] per Sedley LJ.

(8) Finally, and with respect, it is I think, helpful to recall passages from the judgment of my Lord, Elias LJ, in R (Hurley & Moore) v Secretary of State for Business, Innovation and Skills [2012] EWHC 201 (Admin) (Divisional Court) as follows:

(i) At paragraphs [77–78]

'[77] Contrary to a submission advanced by Ms Mountfield, I do not accept that this means that it is for the court to determine whether appropriate weight has been given to the duty. Provided the court is satisfied that there has been a rigorous consideration of the duty, so that there is a proper appreciation of the potential impact of the decision on equality objectives and the desirability of promoting them, then as Dyson LJ in Baker (para [34]) made clear, it is for the decision maker to decide how much weight

should be given to the various factors informing the decision.

[78] The concept of 'due regard' requires the court to ensure that there has been a proper and conscientious focus on the statutory criteria, but if that is done, the court cannot interfere with the decision simply because it would have given greater weight to the equality implications of the decision than did the decision maker. In short, the decision maker must be clear precisely what the equality implications are when he puts them in the balance, and he must recognise the desirability of achieving them, but ultimately it is for him to decide what weight they should be given in the light of all relevant factors. If Ms Mountfield's submissions on this point were correct, it would allow unelected judges to review on substantive merits grounds almost all aspects of public decision making.'

(ii) At paragraphs [89–90]

'[89] It is also alleged that the PSED in this case involves a duty of inquiry. The submission is that the combination of the principles in Secretary of State for Education and Science v Tameside Metropolitan Borough Council [1977] AC 1014 and the duty of due regard under the statute requires public authorities to be properly informed before taking a decision. If the relevant material is not available, there will be a duty to acquire it and this will frequently mean than some further consultation with appropriate groups is required. Ms Mountfield referred to the following passage from the judgment of Aikens LJ in Brown (para [85]):

'….the public authority concerned will, in our view, have to have due regard to the need to take steps to gather relevant information in order that it can properly take steps to take into account disabled persons' disabilities in the context of the particular function under consideration.'

[90] I respectfully agree….'"

63. Without derogating from the principles set out above, what matters for present purposes is that the decision maker must have due regard to the need to remove or minimise disadvantages suffered by persons who share the relevant characteristic of disability and to take steps to meet their needs, so far as they are different from the needs of persons who do not share the characteristic. This flows from s. 149 (1) and (3). The Court must be satisfied that there has been a rigorous consideration of the duty so that there is a proper appreciation on the part of the decision maker of the potential impact of the decision on equality objectives and the desirability of promoting them. If there has been a proper and conscientious focus on the statutory criteria, the Court cannot interfere with the decision simply because it would have given greater weight to the equality implications of the decision. In assessing the decision maker's conduct, it is to be remembered that the statute requires public authorities to be properly informed before taking a decision. What is *not* required is the achievement of a particular end. And, provided it has proper information, questions of weight are for the decision maker, not the Court, subject to *Wednesbury* unreasonableness.

The submissions

64. There are two limbs to the Claimant's submission:

i) It is alleged that the Council's reliance on national air quality levels was unlawful;

ii) It is alleged that the Council erred in failing to impose a condition on the Permission that properly reflected the analysis in the Equality Impact Assessment ("EqIA").

65. The Council and the Applicant submit that the Council suitably discharged its public sector equality duty and that the conditions imposed by the Council were appropriate and sufficient. The relevant conditions are 9, 10, 12a and 14. They rely upon the existence of a s. 106 Agreement as additional support for their position.

The factual background and determination of Ground 4

66. Two persons suffering from disability were identified and are the subject of this challenge:

i) The first was a seriously ill child with multiple conditions including chronic lung disease. Information was received from a Cardiac Nurse at the Hospital where the child was being treated, and from a Sister from the Community Nursing Service outlining his disabilities and highlighting the risk to the child of chest infections caused by air pollution. The child lived 90 m south of the edge of the landscaped edge of the quarry site and 130 m south of the proposed extraction limit of the quarry;

ii) The second was an adult with a severe visual disability. He had only one functioning eye, which was vulnerable because of the absence of tear ducts or moisture to protect its surface. His treating Professor had written highlighting the undesirable risks that could arise from dust and fumes from the quarry and its operations. He lived some 280 m east of the proposed site access.

67. The prevailing wind meant that both homes were generally upwind of any quarry operations. They are situated in an area that is subject to arable farming, which may itself be a source of significant dust emissions.

68. The Applicant's ES included a chapter on air quality dated October 2017. It did not address the risks for the two persons with disabilities. Further information was provided in May 2018. It identified National Air Quality Objectives for Particulate Matter and recorded that "DEFRA defines Air Quality Standards as "concentrations recorded over a given time period, which are considered to be acceptable in terms of what is scientifically known about the effects of each pollutant on health and on the environment."" The information recorded indicated concentration levels and stated at [2.1.10]:

> "The indicated levels are safely within the respective Air Quality (Annual Mean) Objective and background levels of PM10 are well below 17 µg/m^3 threshold as stated in the IAQM 2016

> Guidance and as previously assessed it is not considered there is a risk of the air quality objectives not being achieved an in accordance with Local Air Quality Management Technical Guidance (TG16) (DEFRA 2016), further quantitative assessment is not required. …"

69. The further information proposed design modifications including revising Phases 4 and 5 and assessing dust levels as works progressed. It proposed that "full dust … monitoring will be undertaken as may be required throughout the operational period, which would include representation of [the disabled Child's home]"[1].

70. The Council conducted an EqIA, which was included as Appendix 3 to the Officer's Report. Section 1 correctly identified the main thrust of s. 149 of the Equality Act and identified the purpose of the EqIA as being to ensure that discrimination does not occur by focusing on systematically assessing and recording the likely equality impact of an activity or policy on people with protected characteristics. Section 2 identified the two persons having the protected characteristic of disability with a brief summary of their condition and stated that "the main requirement of this assessment is to ensure that the planning decision by the Local Planning Authority takes appropriate [notice/regard][2] of the two sensitive individuals and their particular health disabilities as they relate to the proposed quarrying development." Section 3 outlined the Applicant's response and proposals, which included the following:

> "a. The original Phases 4 and 5 have been subdivided to create a new phase (5b) parallel to the southern boundary of the site. … The remaining Phase 4 and 5 operational areas are now a minimum distance of 250m from the edge of the residential curtilage of Naboths Vineyard, as opposed to 130m under the original phasing plan. It should be noted that the nearest part of the proposed quarry extraction boundary to Ridge View (Phase 5a) is 270m from the property;
>
> b. The applicant has agreed to accept a 'Grampian' condition stipulating that there shall be no entry into Phase 5b and the area shall remain unworked unless air quality monitoring in the period prior to working of phase 5b confirms that relevant air quality targets can be fully met. … Phase 5b would not be proposed for quarrying development until year 7. The areas facing the garden centre and Ridge View would not be proposed for quarrying until year 6 (for phase 5b) and 10 (for phase 6b). This would allow plenty of time for air quality monitoring and to ensure dust control measures are fully mitigated;
>
> c. The applicant has agreed to accept a condition requiring submission of a scheme of additional / enhanced deployment of dust mitigation measures during the initial site development

[1] The second person had not yet been identified as a source of concern.

[2] There is a word missing in the EqIA at this point, but the sense is clear.

> stage, with particular emphasis on formation of the landscape screening bunds along the southern margin of the site. …;
>
> d. The applicant has agreed to accept a condition requiring submission and implementation of a detailed air quality monitoring scheme with identification of trigger levels for action and a requirement for appropriate action in the event that identified trigger levels are approached. The scheme would have a particular focus on monitoring air quality along the southern boundary of the site nearest to Naboths Vineyard and Ridge View.
>
> e. It is confirmed that the site haul road would be formed in a 2m cutting with a bund to the south. An existing hedgerow along the western margin of the access road would be retained, improved and allowed to grow up to 3m.
>
> f. The applicant has also agreed to accept a planning condition committing to a formal procedure for dealing with validated amenity complaints, with requirements for investigation and mitigation where appropriate."

71. The balance of the EqIA covered the Advice of the Council's Regulatory Services Section, Geographic Characteristics of the Sensitive Properties and its Conclusion. The most relevant parts are set out in Annex C to enable them to be read in context. There are three main strands that appear:

    i) First, the indicated levels would be "significantly below the national objective levels set in legislation": see [4.2]; and "the background air quality is significantly below the level at which action would be required under air quality objectives. The report also predicts that the process contribution from the proposed quarry would be such that it would remain well below national action levels for air quality and within the range of variation of natural background events": see [4.5]; and "the proposed quarry would not be likely to result in any material impact to local air quality given the availability of appropriate dust management controls": see [6.3];

    ii) Despite the presence of the sensitive individuals (generally upwind of operations) and due to the additional phasing and positioning and bunding of the site access road, the Council's Regulatory Services did not consider there to be any dust concerns from the proposed application;

    iii) The Applicant had proposed changes to the design of the quarry and operations. These could be reinforced by appropriate planning conditions.

72. The Officer's Report dealt with this issue at [6.43]-[6.47] which, after identifying the representations and objections on behalf of the two sensitive persons, stated:

> "6.45 Regulatory Services have considered this matter with respect to Naboths Vineyard and also taking into account the more recent representation from Ridge View. They advise that

> the impacts of dust from the site at the sensitive premises are not anticipated to cause an exceedance of the air quality objective levels which would trigger the need for action, even taking into account the particular sensitivities of these receptors. The proposed operations would be significantly below the national objective levels set in legislation. The proposed site is upwind of the sensitive properties relative to the prevailing wind direction. Given also the proposed re-phasing and bunding of the site access road Regulatory Services do not consider there to be any dust concerns from the proposed application. Detailed conditions have been recommended in Appendix 1.
>
> 6.46 …
>
> 6.47 In conclusion, the 2 nearest receptor properties to the site contain individuals with particular susceptibilities to air quality issues and an equalities assessment covering these individuals has been included as Appendix 2. The concerns of the local community with respect to air quality are acknowledged. Regulatory Services are the Council's technical advisors with respect to air quality and they have not objected. They are satisfied that the proposals, as amended, together with the recommended planning condition will ensure that the proposals do not lead to any unacceptable deterioration in local air quality and will protect the health of local residents, including those with particular vulnerabilities."

73. The relevant conditions imposed by the Council were:

> "9. The developer shall submit noise and dust monitoring schemes for the written approval of the Local Planning Authority within 3 months of the date of this permission. The schemes shall detail the proposed procedures, locations and frequencies of monitoring. The approved schemes shall be implemented prior to the Mineral Export Commencement Date and the monitoring procedures shall thereafter be maintained at the Site in accordance with the approved details.
>
> Reason: To protect residential amenity.
>
> *Note: Monitoring within the Site shall be supplemented by monitoring in other appropriate areas under the control of the applicant, under the provisions of the section 106 Legal Agreement accompanying this permission.*
>
> 10. No development shall occur within Phase 5b and within 50m of the south east boundary of the Site in Phase 6b under the terms of this permission unless the following criteria are met:
>
> i. The developer has submitted detailed noise and dust management plans specific to these areas of the development

having regard to section 4.4 of the report reference CE-CB-0617-RP42 - FINAL by Crestwood Environmental dated 31st May 2018 and the results of noise and dust monitoring in preceding phases;

ii. The Local Planning Authority has provided written approval of the noise and dust management plans for the areas referred to in this condition.

Reason: To protect residential and local amenities.

…

12a. The dust mitigation measures stated in the Dust Management Scheme, report reference CE-CB0617-RP10-FINAL and report reference CE-CB-0617-RP42-FINAL (dated 31 May 2018) produced by Crestwood Environmental Ltd shall be carried out in full for the duration of all works on site. The sole exception to this shall be that no construction works shall take place outside of 0900 - 1600 hours Monday to Friday unless this has first been agreed in writing by the Local Planning Authority.

b. The quarry haul route shall be maintained so that it is beyond a distance of 200m from the edge of the property boundary of the dwelling known as Naboth's Vineyard until such time as Phase 5b comes in to operation (refer to Condition 10), in accordance with Section 4.3 of report reference CE-CB-0617-RP42 dated 31st May 2018.

Reason: To protect residential amenities.

…

14. In the event that a complaint is received regarding noise or dust impact and is subsequently validated by the Local Planning Authority, the Developer shall submit a mitigation scheme for the approval in writing of the Authority which shall provide for the taking of appropriate remedial action within an agreed timescale. The mitigation scheme shall be submitted within 10 working days from the day when the Developer is notified of the complaint and the scheme shall be implemented in accordance with the approved details.

Reason: To assist in safeguarding the amenities of the area from noise or dust disturbance by implementing an agreed procedure for dealing with any complaints."

74. The S. 106 Agreement provided as follows:

i) "Dust monitoring scheme" was defined as

> "the scheme for the monitoring of dust to be submitted to and approved by the Council in accordance with condition 9 of the Planning Permission;"

ii) By Clause 7.1 the Applicant covenanted to observe and perform the obligations set out in various schedules including Schedule 6;

iii) Schedule 6, Part 2, was entitled "Dust Monitoring" and included the following obligations:

> "5. To carry out monitoring of dust in accordance with the approved Dust Monitoring Scheme at the Noise and Dust Monitoring Receptors from the date of the grant of Planning Permission for the lifetime of the Development.
>
> 6. Prior to the Mineral Commencement Date to supply records of initial dust monitoring carried out.
>
> 7. To keep written records of the dust monitoring carried out in accordance with 5 above and to supply those records to the Council within 10 working days of a written request to do so.
>
> 8. In the event that the levels of dust arising from mineral extraction on the Land are detected above trigger levels identified in the Dust Monitoring Scheme to submit a written mitigation scheme within 10 working days to the Council for approval and any such scheme shall be deemed approved if the Council does not respond within 3 weeks of its submission.
>
> 9. To fully implement and maintain all mitigation measures approved in the scheme identified in 8 above to ensure that the triggers levels in the Dust Monitoring Scheme are not exceeded and to repeat the action in 8 above as necessary."

75. The first limb of Ground 4 has no merit and is unarguable. As set out in the Applicant's Further Information, the EqIA and the Officer's Report, the evidence before the Committee indicated that levels of air pollution would be significantly below the national objective levels set in legislation. The available information was that those statutory levels were considered to be acceptable in terms of what is scientifically known about the effects of pollutants on health and on the environment. Furthermore, the evidence was that the quarrying would not make a material difference to background levels. There is no basis upon which the Court can properly be invited to speculate that such levels were or might be damaging for the two sensitive individuals living where they do; to the contrary, the evidence is that they would not be. To my mind, the notion that this planning decision should be set aside because the Council did not go back to the treating doctors and ask those treating the individuals whether it was necessary to achieve levels even further below the statutory levels is bordering on the absurd for two main reasons. First, there is no reason to think that the existing background levels were detrimental to their health; and, second, the Committee was entitled to conclude that the quarrying would not make a material difference to those levels.

76. Turning to the principles summarised at [62]-[63] above, it is clear that the Council gave suitably rigorous consideration of its duty so that there would be a proper appreciation on the part of the decision maker of the potential impact of their decision; and there was a proper and conscientious focus on the statutory criteria, with evidence that entitled the Committee to conclude that the quarrying operations would not be harmful for either of the two sensitive individuals. It is not arguable that the Committee's decision was *Wednesbury* unreasonable.

77. Turning to the second limb of Ground 4, the conditions imposed by the Committee, taken in conjunction with the s. 106 agreement, were a reasonable and pragmatic set of measures to provide further safeguards for the sensitive individuals if, contrary to expectation, any dust related problem arose. The Claimant submits that neither the conditions nor the s. 106 Agreement identify what would be trigger points for action under those provisions and that therefore they are ineffective to the point of rendering the decision unlawful. Although it is correct that no trigger points are identified, I do not accept that this renders the provisions ineffective or unlawful. Conditions 9 and 10 require the establishment of dust monitoring schemes which must be approved by the Council. It is, in my judgment, obvious that such monitoring schemes would have to descend to the detail of what levels would trigger the need for action: otherwise they would be pointless. Similarly, the detailed dust management plans to be submitted before commencing Phase 5b would be useless and irrelevant unless, either singly or in conjunction with other documents/schemes, they specified the objectives of the management plan in terms of levels of pollution to be allowed and achieved. The Council referred to [70] of *Trump International Golf Club Scotland Limited v The Scottish Ministers* [2015] UKSC74 by way of analogy. In my judgment the analogy is apposite though rather tenuous: and it is not necessary to resort to authority in order to understand the purpose (express and implicit) of conditions 9, 10 and 12 in this case. Condition 14 provides additional effective protection, giving the Council power to require and enforce mitigation of a valid complaint regarding dust impact is received at any time during the development.

78. The position under the s. 106 Agreement is even clearer because [8] of Part 2 of Schedule 6 makes express reference to trigger levels in the Dust Monitoring Scheme submitted to and approved by the Council under Condition 9 of the Planning Permission. It is therefore clear beyond argument that trigger levels were to be identified, submitted and approved as part of the Condition 9 Dust Monitoring Scheme.

79. Standing back and looking at the conditions and s. 106 Agreement that the Council decided to require of the Applicant, they create a substantial and effective framework for ensuring that dust levels do not exceed satisfactory levels and, if they were to do so, for requiring appropriate mitigation measures to be taken. There is no arguable basis for setting the decision aside by reference to what they said or did not say.

80. In refusing permission on Ground 4, Sir Ross Cranston said:

> "Breach of the equality duty (Ground 4) is not arguable when the Council had an impact assessment for the vulnerable individuals; there were modifications to the scheme to take this into account; and conditions were to be imposed as to monitoring etc. so to protect them and others potentially affected by adverse air quality."

I agree.

81. For these reasons, the renewed application for permission to pursue Ground 4 is refused. The Claimant's proposed challenge under Ground 4 therefore fails.

Conclusion

82. The Claimant's challenge to the Defendant's decision to grant planning permission fails.

ANNEX A

GROUND 1: OFFICER'S REPORT [6.63]-[6.71]

6.63 Water Environment An assessment of the Proposed Development on the water environment at the Site and the surrounding area has been undertaken. This finds that the base of the mineral extraction (and subsequent restoration levels) is likely to be on average 10m above the prevalent groundwater table. Hence, the proposed development is unlikely to affect the underlying groundwater flow. A significant freeboard will remain above the water table with excessive rates of recharge not predicted. As such, the assessment concludes that groundwater abstractions and any private water supplies in the local area are unlikely to be affected adversely by the proposals.

6.64 The assessment advises that there are no important surface water features at site level or in the immediate vicinity which are likely to be adversely affected by the proposed development. The site forms part of wider catchment areas, and is not considered by the assessment to be hydrologically linked to any sensitive environmental designations. Nor is the site considered to be sensitively located in relation to any important water features. The magnitude of any potential effects on surface water features is considered to be negligible, both in terms of flows and quality and local surface water abstractions are unlikely to be affected. No risk is expected to groundwater quality or groundwater levels/flows at the site or in the aquifer around the Site. The site lies within a Flood Zone 1 risk area (low risk) and has no history of flooding. The assessment advises that the proposed development is not vulnerable to, or at risk of flooding and will not increase flood risk elsewhere, including upon restoration.

6.65 The assessment has indicated that perched water encountered by the applicant's boreholes represents localised pockets of groundwater with very limited correlation between the borehole logs. Therefore the development is unlikely to have an impact in the wider environmental context. The design of the scheme maintains the flows and falls to the springs within the Alder Coppice.. Whilst the proposals are not considered to lead to any significant impacts in relation to groundwater, a groundwater/water monitoring program will be undertaken to provide additional confidence in the protection of the water environment.

6.66 A supplementary survey of local surface water features has also been undertaken following the recommendations of the Environment Agency who have received representations from objectors. This confirms that known local groundwater abstractions are from the principal aquifer rather than the superficial deposits. The presence of a number of springs surrounding the area are considered to be related to localised superficial deposits. Recharge and flow mechanism for the springs within the Alder Coppice (North West of the site) have been reviewed. It is concluded that in combination with the superficial geology, the proposed depth of working is unlikely to affect the recharge to the springs. Springs at Grange Farm feed a brook within the farm's landholding which supplies water for stock. The superficial geology for the area in combination with the applicant's boreholes implies that there is no direct flow pathway between the proposed development and the springs at Grange Farm with intervening marl/clay deposits forming a barrier to flow with respect to perched

groundwater. The main springs at The Grange (and neighbouring property) are at a lower elevation than the proposed base of the extraction in this area so are not likely to be directly affected by the development. Also, only a relatively small proportion of the catchment for the springs at Grange Farm intersects the proposed development with the majority comprising unaffected agricultural land. The supplementary report concludes that the proposed development (as amended) is unlikely to have a significant impact on the identified water features.

6.67 The Environment Agency was re-consulted on the supplementary survey and sought clarification on a number of issues which was subsequently provided by the applicant's hydrologist in an addendum to the report. This reiterates that no source-receptor relationships have been identified nearer to the site and the possibility of direct effects decreases with distance. The applicant's willingness to accept a water monitoring condition is reaffirmed.

6.68 The Agency has maintained its position of not objecting, whilst noting that 'there remains considerable uncertainty as to the spring mechanisms giving rise to the identified water features' so 'it is not possible to be fully confident about the potential risks to these features'. They note that 'as the regional groundwater is well below the ground level, this would suggest that the springs/ponds rely on the shallow superficial perched systems which are potentially more vulnerable to changes in topography'. 'Changes in the surface water runoff from the site may effect recharge to the springs even if the groundwater mechanisms themselves are not affected'. They state that 'this is a complex hydrogeological setting and ideally further investigation/monitoring should be undertaken to refine the conceptual model, although even then it is likely that there would remain uncertainty in terms of spring mechanisms/catchments'. The Agency acknowledges that it would be difficult to 'fully identify and confirm the precise nature of the spring flow mechanisms'. Therefore they recommend that a condition/legal agreement is imposed requiring monitoring of the identified features (quantity/quality) and a condition/legal agreement to secure mitigation including remediation of any adverse impacts should this be necessary. The Agency notes that a number of monitoring boreholes are proposed across the development site and they recommend that there should be a commitment to wider monitoring to assist with spring lines/private water supplies.

6.69 The Agency has suggested a water monitoring planning condition. The officer has reviewed this condition and has made some amendments in consultation with the applicant, to ensure the condition meets the appropriate legal tests. The condition requires:

1) Ongoing hydrological monitoring;
2) Identification of trigger levels where action would be taken including, if necessary, cessation of working in a given area;
3) A requirement to take appropriate mitigation action in the event that trigger levels under ''2' above are met;
4) Working not to proceed within the proposed bottom 2 metres of the excavation unless appropriate criteria are met with respect to groundwater monitoring, including maintenance of an appropriate freeboard above the permanent groundwater table.

The Environment Agency has been notified of the amended condition which is included in Appendix 1 and would be supported by an associated legal agreement clause securing monitoring beyond the application area boundary.

6.70 Objectors have commissioned a report from a hydrological consultant which was received 9 days prior to the deadline for the current report. The consultant contacted the Environment Agency at that stage raising a number of objections regarding the hydrological implications of the proposed development including:

i. Concern that the maximum groundwater level in the Principal Aquifer beneath the site may have been considerably underestimated as it is stated that no representative groundwater level data has been presented with the application. There is a chance that the water table may (in a wet winter) rise above the proposed base of the quarry at 106m AOD.

ii. Concern that the catchments to springs are poorly defined and the larger springs may be from the Principal Aquifer and not from perched groundwater bodies. The very limited data that has been presented can be interpreted in different ways. There are licensed abstractions and a scheduled ancient monument downstream that are dependent on maintenance of the current flow regime. There is no baseline monitoring of flows. Without baseline data there is no chance that impacts can be assessed and adequate mitigation planned.

iii. With respect to the ancient woodland the applicants have not provided any sort of rebuttal to the 50 m stand-off that is required by Natural England's Standing Advice. Therefore a precautionary approach must be taken, and at least 50 m standoff should be insisted upon.

6.71 The applicant’s hydrologist has considered this submission and has made the following comments which the agent has also discussed with the Environment Agency:

i. It is not proposed to extend operations into the Principal Aquifer. The applicant is willing to accept a condition ensuring that a minimum freeboard is retained above the aquifer. A freeboard of 2m is suggested, using results of the proposed groundwater monitoring scheme. In practice however, the applicant’s hydrological data indicates that any freeboard is this unlikely to be less than 8m.

ii. It is also considered that any assertion that all the springs, seepages etc. (including those at higher levels) being wholly related to the Principal Aquifer is not robust. Nevertheless, as the proposals provide for a minimum 2m freeboard and that extraction will not progress below circa 110mAOD until around 7 years in to the future, a detailed monitoring regime will ensure the protection of the Principal Aquifer and account for the future situation. The proposed planning condition and controls (attached as you previously provided to the EA), which builds upon the technical advice from the EA, is considered a more robust and practical approach, providing certainty throughout operations over the lifetime of the proposed development. The approach also allows for operations and the planning authority to respond accordingly to long term in-

operation monitoring, through review and mitigation as may be necessary. This is a standard approach in relation to quarrying operations.

iii. Given that the application makes no provision for working into the Principal Aquifer and that risk mitigation proposed in the original ES was that a minimum 2m freeboard should be retained below extraction, we would propose this become a planning control/condition upon any planning permission. This would also be a key 'criteria' to be included in any Hydrogeological Monitoring Scheme.

6.72 The Environment Agency has responded to the resident's consultant's objection. They acknowledge that uncertainty remains regarding perched aquifers and local springs and that ideally, some prior hydrological monitoring of these features should have been undertaken. They acknowledge however that the proposed hydrological monitoring condition will allow this information to be obtained. The officer notes in this respect that extraction would not exceed a depth of 109m AOD (i.e. within 3m of the proposed extraction base) until year 9. Hence, there is ample time for monitoring to take place to identify any potential implications for local hydrology and to take appropriate remedial action if necessary. The objector's consultant also makes reference to Natural England adopting a buffer of 50m from the edge of ancient woodland. This is incorrect. The Natural England / DEFRA guidance 'Ancient woodland and veteran trees: protecting them from development' (updated 4/01/18) refers in 'Mitigation' to maintaining a minimum buffer of 15m. The applicant proposes a buffer of twice this width.

6.73 Given the availability of an appropriate planning condition and the absence of a formal objection from the Environment Agency it is not considered that a planning refusal on grounds of hydrology could be substantiated. It is concluded that any potential residual risks to local hydrology can be effectively managed so proposals can be accepted with respect to policies and guidance covering drainage and hydrology. (Core Strategy Policy CS18)

ANNEX B

GROUND 3: OFFICER'S REPORT [6.27]-[6.35], [6.58]-[6.59]

6.27 Green Belt appraisal: The proposed site is located within the West Midlands Green Belt where additional policies restricting development apply. The NPPF includes a core land use planning principle that "planning should", among other things, "take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them .. ". NPPF paragraph 133 declares that the "fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence". Paragraph 134 refers to the "five purposes" served by the Green Belt:

i. first, "to check the unrestricted sprawl of large built-up areas":
ii. second, "to prevent neighbouring towns merging into one another";
iii. third, "to assist in safeguarding the countryside from encroachment";
iv. fourth, "'to preserve the setting and special character of historic towns": and
v. fifth, "to assist in urban regeneration, by encouraging the recycling of derelict and other urban land".

6.28 Local planning authorities "should plan positively" to do several things in the Green Belt, including "to retain and enhance landscapes [and] visual amenity". The NPPF policies for development control in the Green Belt include. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm is clearly outweighed by other considerations (NPPF 145). Certain other forms of development are not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. This includes amongst other matters mineral extraction, as it is recognised that minerals can only be worked where they are found (NPPF 147). Hence, mineral extraction is not 'inappropriate' in the Green Belt, provided openness is preserved and there is no conflict with the other purposes of the Green Belt. Core Strategy Policy CS5 supports national policy by restricting development in the open countryside and states that within the Green Belt "there will be additional control of new development in line with government guidance".

6.29 The development does not conflict with the purposes of including land in the Green Belt. The following can be said with respect to the 5 Green Belt tests in NPPF paragraph 134:

- Test 1: The proposals would not hinder the objective of preventing unrestricted sprawl of large built-up areas. The proposed use is temporary, albeit comparatively long-term and the site is not in close proximity to any large built-up areas.

- Test 2: The proposals would not lead to neighbouring towns merging into one another. The site does not adjoin any towns and is adequately detached from the nearest settlements including Shipley and Pattingham.
- Test 3: The proposals would not lead to any permanent encroachment of the countryside. The quarry scheme is temporary and there would be phased working and restoration so the area of disturbance would be much smaller than the total site area at any one time. The changes which the proposed development will result in are reversible. Whilst there will be a permanent change to the landform following quarrying this will only be apparent at a local level as the site is set in a topographic depression, and it will remain open countryside. Canebuff ridge above the site will remain as a significant feature in the local landscape. Conditions can be imposed to support the mitigation measures included in the application.
- Test 4: The proposals would not impact adversely on the setting and special character of any historic towns. The nearest historic town of Bridgnorth would be unaffected by the development. The Council's Conservation section has not objected.
- Test 4 [SIC]: The proposals would not hinder the ability to assist in urban regeneration. Supply of mineral from the site to the applicant's established local markets would be expected to assist with urban regeneration.

6.30 The concept of 'openness' incorporates spatial / physical and visual components. Spatially "openness" means the state of being free from built development, the absence of buildings - as distinct from the absence of visual impact. A decision maker must determine whether the potential impacts of a proposal on openness would be sufficient to materially undermine the perception of 'openness'. This is as distinct from identifying specific localised impacts. A quarry scheme which has widespread impacts on the countryside would be expected to affect openness so would comprise inappropriate development. Conversely, a well-designed scheme where impacts have been minimised and which preserves openness and does not conflict with the purposes of including land within the Green Belt would not comprise 'inappropriate development' in the Green Belt. (NPPF 146)

6.31 The applicant's visual appraisal confirms that there would be localised views towards the site but that the phased nature of the proposals and careful siting of plant and landscaping means that any residual visual impacts are not significant. The Council's landscape consultant has reviewed the applicant's LVIA and has accepted the methodology employed and the conclusions reached. The Council's Conservation team has also not objected, concluding that any residual impacts on the setting of heritage assets would be localised and would amount to 'less than substantial harm'. Visual and landscape effects are considered further in a succeeding section which has also been taken into account in assessing Green Belt policy.

6.32 The proposals may be apparent to the nearest properties during the initial development phase before peripheral screening is fully established. The plant site has been designed to be set down by 2m at a low point within the landscape and will use low-profile equipment @8m tall max. It will be surrounded by a 3m bund which will be planted with pre-coppiced willow. The tallest plant items will be oriented with their narrow profile facing sensitive receptors to the south west. Hence, any visibility of plant within the landscape will be limited and localised. The access road would be well

screened and set down beneath landscaped bunds. The majority of the quarrying operations would take place within a topographic depression. Phasing has been designed to ensure that landscape planting is well established before quarrying commences in more elevated areas of the site to ensure effective screening.

6.33 Whilst there would be a permanent change in landform it is not considered that this would affect the fundamental character of the landscape. The existing shallow topographic depression would be deepened and widened and there would be a steeper slope in front of parts of Canebuff wood. However, the depression would not be widely visible and the woodland ridge would remain as the dominant landscape feature. The character and proposed use of the restored landform is considered to be typical of the local countryside. It is not considered therefore that any residual effects on landscape and visual amenity would result in material impacts to the sense of openness of the Green Belt.

6.34 Regarding the spatial dimension of openness the proposals would temporarily affect openness due to the phased extraction and progressive restoration with significant landscaping works to be carried out, but the openness of the site over time will be preserved following the restoration works. Further, at any one time no more than @1/3 of the total operational quarrying area would be subject to disturbance with the remainder being either unworked or restored / under restoration. It is not considered that the proposals would lead to any coalescence with existing development in the local area.. The local area is rural in nature and the design and spatial isolation of the plant site would not lead to it being seen as a material encroachment with capacity to add to the built effect of existing development.

6.35 Amenity is considered in a separate section below which has also been taken into account in assessing Green Belt policy. The Council's Regulatory Services section has not objected subject to the recommended conditions. It is not considered that the extent of any amenity impacts are likely to be sufficiently significant or widespread as to materially affect Green Belt openness. The proposed mitigation measures within the application are capable of being supported by detailed planning conditions to ensure that landscaping and other mitigation works proceed as intended for the duration of the proposed operations. Overall it is concluded that the function and sense of openness of the Green Belt would be preserved over time so the quarrying proposals would not comprise inappropriate development within the Green Belt and would comply with policy MD6. This is having regard to NPPF 146 which confirms that quarrying is not inappropriate in the Green Belt where the openness of the land is preserved and there is no conflict with the purpose and function of the Green Belt.

…

Landscape and Visual Impact

6.58 A Landscape and Visual Impact Assessment (LVIA) has been carried out in accordance with relevant landscape institute methodology. This considers the potential effect of the proposals on the local landscape and heritage assets and on visual amenities with reference to 11 representative viewpoints surrounding the site. The LVIA concludes that there would be no significant adverse visual effects after

mitigation. The most significant visual impact would be to a maximum level of 'Moderate-Major' for a short period and at one viewpoint only. All other effects would be at a Moderate or lower level with the general scale of impacts being 'Small' or 'Very Small'. The adverse effects on the landscape resource are also assessed as limited to a maximum level of 'Moderate' and are considered to be 'Not Significant'. Restoration would result in a 'Minor-Moderate' enhancement of the landscape within the Site. The applicant's LVIA has been assessed by the Council's landscape consultant who has accepted the methodology and conclusions.

6.59 As noted above, an objector has advised that a woodland compartment to the north of the extraction area is due to be clear-felled shortly. Concerns have been expressed by objectors that this will open up additional areas of the proposed site which are not currently visible, from the vicinity of Rudge Hal to the north and that this could have additional impacts on the setting of associated listed buildings. In response to this the applicant has amended the scheme to include provision of 3m bunding around the plant site which would have pre-coppiced willow planted on upper external batters. The highest plant has also been set down further. It is stated that this will ensure effective screening of the plant site including when the woodland felling operations take place. The Council's landscape consultant has been informed of this in reaching the above conclusions. In conclusion, whilst there would be some residual impacts to landscape and visual amenities these would not be significant and the extent of any such impacts would be limited by the proposed mitigation works. Restoration would deliver benefits in landscape terms. Overall, the residual minor negative impacts would be outweighed by 'great weight' which the NPPF requires to be given to the benefits of mineral extraction, including to the economy (NPPF 205).

ANNEX C

GROUND 4: EQUALITY IMPACT STATEMENT

4. Advice of Council's Regulatory Services section

4.1 The Council's Regulatory Services section (Environmental Health) have been consulted on the application and the appropriate technical advisor on amenity issues. Their initial response below was to raise no objection subject to conditions:

Regulators Services initial consultation response:
Having considered the dust assessment submitted with this application I am of the opinion that the mitigation measures proposed are satisfactory and should ensure no significant detrimental impact at nearby residential and commercial properties. As a result I propose the following condition:

i. All dust mitigation measures stated in the Dust Management Scheme, report reference CECB0617-RP10-FINAL produced by Crestwood Environmental Ltd shall be carried out in full for the duration of works on site. Reason: to protect the amenity of the surrounding area.

In relation to noise it is noted that mitigation is proposed in section 5-5.2.3 of the Noise Assessment report ref CE-CB-0617-RP17-FINAL produced by Crestwood Environmental Ltd. Hours of operation are also specified in section 5-5.2.4 of the same report. I would advise that both all of these mitigation measures are suitably conditioned. In addition the noise assessment states that a 3.5m high bund to the south of the site and a 2.5m bund to the north of the site is required to bring noise levels down as much as possible. This would result in noise levels of 43.8dB LAeq 1 hour at The Alders and 49.4dB LAeq 1 hour at Naboths Vineyard. I would recommend that these levels are conditioned as the maximum levels to be found at these locations with monitoring undertaken by the quarry to establish that these levels are achieved. It is noted that the levels more than 10dB above background however the assessments are considered suitably conservative and it is noted that over the course of the development noise sources will become lowered in the site reducing noise at nearby receptors.

4.2 Regulatory Services have been informed of the sensitive receptor issues and have made the following supplementary response following a detailed conversation with the officer with respect to Naboths Vineyard:

I note that there is an individual living in close proximity who may be particularly sensitive to dusts arising from this activity. Having considered if this should be taken into consideration I would note that when carrying out other functions under legislation used by Regulatory Services there is case law to suggest that sensitivity to a particular aspect should not be taken into consideration and instead the impact on the average person should be considered –. This is in relation to the Environmental Protection Act 1990 and Statutory Nuisance which falls under s79 of the Act.

However, in respect of planning having discussed this matter with my line manager and legal it is noted that sensitivity could be taken into consideration. Having said this the impacts of dust from the site in question at the premises where there is a sensitive individual is living is not anticipated to cause an exceedance of the air quality objective levels which would trigger action. Indeed the levels would be significantly below the national objective levels set in legislation and therefore I would consider that even though there is a sensitive receptor in the general area (noted to generally be upwind of the development with a prevailing wind hence reduced impacts likely) and due to the additional phasing and positioning and bunding of the site access road I do not consider there to be any dust concerns from the proposed application.

4.3 The officer has subsequently advised Regulatory Services of the presence of a second sensitive receptor at Ridge View, the presence of which has only recently come to light in the planning consultation process. Regulatory Services have advised that the same conclusions apply with respect to this property.

4.4 The officer has also asked Regulatory Services whether a year of pre-monitoring of background air quality levels should be undertaken prior to determination of the application in order to fully define the air quality background levels, as suggested by objectors. Regulatory Services have reaffirmed that the proposed planning conditions and amended layout proposals are sufficient to address the identified concerns with respect to air quality.

4.5 The applicant's agent has advised in this respect that the air quality report accompanying the application takes account of national DEFRA air quality data which is based on a 1km grid. This data indicates that background air quality is significantly below the level at which action would be required under air quality objectives. The report also predicts that the process contribution from the proposed quarry would be such that it would remain well below national action levels for air quality and within the range of variation of natural background levels.

5. <u>Geographic characteristics of the sensitive properties</u>

5.1 With respect to Ridge View it is noted that large arable fields are located within 30m to the north-west and south of the property. Normal farming operations in these fields might reasonably be expected to have a significant effect on local air quality at certain times of the year. By contrast the proposed quarry operations would remain over 500m away for the first 7 years, 270m at their nearest, and would be subject to detailed and comprehensive dust mitigation measures. The nearest fields to the property within the application site re also in arable use so would be expected to generate dust during normal agricultural operations. This contribution to the local dust environment would not apply in the event that the quarry operations proceed. The property is also located within 20m of the A454 and within a similar distance to a large car park associated with the Gardenland Nursery and an adjoining college site.

5.2 Naboths Vineyard immediately adjoins a large arable field to the west and is within 40m of a further field to the east. Local air quality therefore has the potential to be affected by normal farming activities. As is the case with Ridge View, arable land further north within the site would not be subject to arable farming if the quarrying

proceeds and this would represent an 'offset' for the local background dust climate. The property is located closer to the A454 than the proposed quarry access road, which would be set down in a cutting for most of its length and screened by a mature hedgerow which would be strengthened.

6. Conclusion

6.1 The particular sensitivities of the 2 individuals living in proximity to the proposed quarry site have been assessed as part of the planning consultation process and under an Equality Impact Assessment. The applicant has been made aware of these concerns and has agreed to a number of changes to the layout of the site which have been designed to provide appropriate mitigation for the identified issues which refer mainly to air quality issues. These amendments would be reinforced by the recommended planning conditions.

6.2 The Council's Regulatory Services section has been consulted and is satisfied that the identified issues can be effectively addressed through the proposed amendments and recommended planning conditions.

6.3 The geographic context of the receptor properties has been assessed. DEFRA survey data provided in the applicant's air quality report indicates that the site is in an area where background air quality is generally good and falls significantly below the level at which action is required under national air quality standards. The quarry is upwind of the receptors. The report concludes that the proposed quarry would not be likely to result in any material impact to local air quality given the availability of appropriate dust management controls. It is noted that such controls do not apply for normal farming operations in arable fields adjoining these properties.

6.4 It is concluded that the interests of the sensitive receptors can be adequately safeguarded given the design of the quarrying proposals and the available planning conditions. This conclusion is supported by the Council's Regulatory Services section and by experience of operation of other sand and gravel sites within Shropshire.