The Planning Inspectorate

Appeal Decision

Site visit made on 29 September 2022

by B Davies MSc FGS CGeol

an Inspector appointed by the Secretary of State

Decision date: 27 February 2023

Appeal Ref: ROMP 22/2 (APP/Y3940/W/22/3296101)
Freeth Farm Quarry, Compton Bassett, Calne, SN11 8RD

- The appeal is made under paragraph 11 of Schedule 13 of the Environmental Protection Act 1995 against the determination of conditions on a mining site that differ from the proposed conditions set out in the application.
- The appeal is made by Mr Peter Andrew (Hills Quarry Products Limited) against the decision of Wiltshire Council.
- The application Ref 16/05464/WCM was dated 23 May 2016
- Notification of the determination of conditions to which a mining site is to be subject was given on 14 March 2022
- The conditions in dispute are Nos 5, 13 and 17 which state that:
- Condition 5: *Notwithstanding the details shown on the approved plans, no development shall commence until a scheme detailing the provision of a 70.0 m buffer/standoff from the boundaries of the nearby dwellings to toe of screen bund has been submitted to and approved in writing by the Mineral Planning Authority. Thereafter the development including the buffer zone shall be implemented in accordance with the approved details*.
- Condition 13: *No development shall take place until a Noise Management Plan has first been submitted to and approved by the Mineral Planning Authority. The plan shall identify measures for the control of noise emissions associated with the working and restoration of the site, details of continuous monitoring procedure to monitor noise levels at The Freeth, Freeth Farm Cottages and The Lodge and what mitigation would be introduced if not complaint and timescales for implementation and procedures for addressing any complaints. Following its approval, the Plan shall be implemented throughout the duration of the development.*
- Condition 17: *No development shall take place until a Dust Management Plan has first been submitted to and approved by the Mineral Planning Authority. The plan shall identify measures for the control of dust emissions associated with the working and restoration of the site, details of continuous monitoring procedure to monitor dust levels at The Freeth, Freeth Farm Cottages and The Lodge and what mitigation would be introduced if not complaint and timescales for implementation and procedures for addressing any complaints. Following its approval, the Plan shall be implemented throughout the duration of the development.*
- The reasons given for the conditions are:
- Condition 5: *To protect the amenity currently enjoyed by the occupiers of adjoining residential properties.*
- Condition 13: *To ensure that measures are put in place to control noise emissions and to safeguard the amenity of neighbouring properties.*
- Condition 17: *To ensure that measures are put in place to control dust emissions and to*
- *safeguard the amenity of neighbouring properties.*

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Hills Quarry Products Limited against Wiltshire Council. This application is the subject of a separate Decision.

Procedural matters

3. Concerns were raised by interested parties regarding the length of time between notice of the appeal and deadline for representations given the significant number of appeal documents to review. The requested extension of a week was extended to all parties.

4. An Environmental Statement was jointly produced for the site with parallel planning application ref: 16/05708/WCM '*Construction of a quarry field conveyor to transport excavated soft sand from Freeth Farm Quarry to the existing Processing Plant*'.

5. The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (2011 EIA Regulations) apply to this appeal. Regulation 76 of the 2017 EIA Regulations sets out the circumstances under which the 2011 EIA Regulations continue to apply, including where '*an …….Appellant…… has submitted an environmental statement or requested a scoping opinion*' prior to the commencement of the 2017 EIA Regulations. I am satisfied that, reviewed against the requirements of Schedule 4 of the 2011 EIA Regulations, the ES is adequate in legal terms and I have considered the contents of it in coming to my decision.

6. During the appeal period it was confirmed by the Mineral Planning Authority (MPA) that the plan shown in paragraph 114 of the 'officer's report to the Strategic Planning Committee of 15 July 2021' was the same as that attached to the original permission and that there were no other plans originally attached.

7. The MPA declined to provide a copy of the legal advice that they had relied upon regarding condition (g) of the original permission on the basis that it was subject to legal professional privilege.

8. I also confirmed with the MPA and appellant that they had had the opportunity to comment on the numerous representations from interested parties.

Background

9. Mineral planning permission 3809/NW was granted on 5 September 1956. The consented mineral for excavation is soft sand (also known as building sand). Extraction is yet to take place so the site is defined as 'dormant'. Under Schedule 13 of the Environment Protection Act 1995 (EPA 1995) mineral development cannot lawfully commence on a dormant site until a modern scheme of conditions has been approved by the MPA.

10. The appellant intends to excavate the sand and has therefore sought a review of the mineral planning conditions following pre-application advice from Wiltshire Council (the MPA). The appellant proposed a schedule of 37 planning conditions. This followed 7 rounds of public consultation and receipt of over 400 objections.

11. The MPA determined a schedule of 36 modern conditions on 14 March 2022 following a meeting of the Strategic Planning Committee. In the main these reflect the substance of those proposed by the appellant. However, disputed condition 5 was inserted to require a 70m buffer zone between residential properties and screening bunds, overturning the recommendation of the planning officer. In addition, disputed conditions 13 and 17 were significantly amended to include, among other things, continuous environmental monitoring.

12. Where the MPA determines conditions that differ in any respect from the proposed conditions set out in the application the person who made the application may appeal to the Secretary of State under paragraph 11(1) of Schedule 13 of the EPA 1995.

Powers at appeal

13. Schedule 13, paragraph 16(3) of the EPA 1995 applies paragraph 6 of Schedule 2 of the Planning and Compensation Act 1991 ('determination of appeals'). This paragraph states that on appeal the Secretary of State[1] may:

    a) allow or dismiss the appeal, or

    b) reverse or vary any part of the decision of the MPA (whether the appeal relates to that part of it or not),

    and may deal with the application as if it had been made to him in the first instance.

14. For the avoidance of doubt, the planning permission to excavate minerals at Freeth Farm is not at risk. It is not open to me to re-determine the permission itself. My powers are restricted to reviewing the suite of conditions imposed by the MPA.

Requirements for conditions

15. Schedule 13, paragraph 9(7) of the EPA 1995 states that when the MPA determines the conditions to which a dormant site is subject under paragraph 9(6) these:

    a) may include any conditions which may be imposed on a grant of planning permission for minerals development;

    b) may be in addition to, or in substitution for, any existing conditions to which the permission in question is subject.

16. Paragraph 186[2] of the Minerals Planning Practice Guidance (PPG) states that all conditions must meet the policy tests[3], be necessary and should not affect the economic viability of the operation.

17. Economic viability is defined in the PPG as '*the ability of a site to produce sufficient revenue to cover all of its operating costs (including finance costs and depreciation) and produce an appropriate return on capital. The key test is the extent to which the further restrictions imposed by new conditions would cause*

[1] The powers of which are delegated to me as an 'appointed person'
[2] Paragraph: 186 Reference ID: 27-186-20140306, Revision date: 06 03 2014
[3] The policy tests are those set out in paragraph 56 of the National Planning Policy Framework (2021)

extra operating costs or restrict revenue to the extent that economic viability would be prejudiced adversely to an unreasonable degree'.

Main issues

18. The main issues are therefore:

- whether conditions 5, 13 and 17 should be imposed on the permission to ensure that the development meets the requirements of modern local and national policies, with particular regard to the effects of dust, noise and visual impacts on nearby residents, and
- whether the economic viability of the operation would be affected to an unreasonable degree by imposition of any or all of conditions 5, 13 or 17.

Reasons

Site setting

19. The site is located on approximately 11.5ha of arable land sloping downwards towards Abberd Brook to the east, beyond which the land rises towards the village of Compton Bassett. The site itself intersects four fields that are generally separated by mature hedging and occasional trees. There is a fringe of woodland to the north-east of the site that continues towards the bottom of the valley and around the Abberd Brook. The development would affect three Public Rights of Way, including a bridleway.

20. There are several dwellings in proximity to the site. Freeth Farm Cottages[4] to the west is a private house and garden, enclosed on three out of four sides by the boundary of the site; the fourth side is the existing lane that would be used for access to the site. The boundaries of 'The Freeth', comprising at least two dwellings[5] and 'The Lodge' are both separated by the width of a lane from the western site boundary. Compton Bassett is over 500m distance from the eastern site boundary.

21. The site is part of the wider Calne Quarry complex. This comprises the nearby Sands Farm Quarry, Old Camp Farm and Low Lane Extension, which is still being worked and restored with landfill. The mineral excavated locally is processed at Sands Farm Quarry, approximately 1.5km to the south of Freeth Farm Quarry. It is proposed that sand extracted at the site would also be transported via a conveyor belt to Sands Farm Quarry for processing. A short section of conveyor would be within the site, but the majority of the conveyor is subject to a separate application[6] and parallel appeal[7].

22. It is estimated that about 300,000 tonnes of sand would be excavated at the site over a period of approximately six years. It would be worked in seven phases moving approximately east to west, with an eighth phase comprising restoration within 12 months of cessation of excavation. Quarrying works would extend to approximately 4m depth. Groundwater would be pumped out of excavations into settlement ponds prior to discharge into a 240m long recharge trench above the Abberd Brook. The site would be progressively restored to

[4] Referred to by the owners as 'Freethcot'. I note that the MPA refers to this as two dwellings.
[5] The MPA states that there are four houses, but Mr Pendley states that there are 'now 5 dwellings' (3 August 2022). Other sources suggest two houses at The Freeth.
[6] 16/05708/WCM
[7] APP/Y3940/W/22/3296101

agricultural use as phases are completed. Two gated access points would be provided from the lane that runs past The Freeth, Freeth Farm Cottages and The Lodge.

23. Bunds would be constructed temporarily around parts of the different phases, with the objective of reducing the visual and environmental effects on the locality. Construction and removal of bunds would be restricted to 8 weeks per year through condition 11.

Condition 5: buffer zone

24. Condition 5 requires that a scheme providing details of a 70m buffer[8] from the boundaries of the nearby dwellings to the toe of screening bunds is approved by the MPA. The purpose of this condition is to protect the amenity of the occupiers. The bund would be 19m wide resulting in a total of 89m between the dwellings and the workings. In the alternative, the appellant had proposed a 16m buffer from residential properties to the toe of the screening bunds (a total of 35m to the workings). The reason given for challenging the MPA's condition is that anything larger than this would cause the scheme to become unviable.

25. The MPA's appeal statement explains that a buffer distance of 16m would harm the living standards of nearby residents from noise, dust and loss of visual amenity. The statement records that '*a 70m buffer should be required. This increase is considered to be affordable within the FVA calculation. Anything less than that would of necessity be much less due to the presence of existing trees, hedging and other vegetation beside the western boundary. The 70m distance places the bund to the other side of that heavy screening, consequently mitigating the impact to the neighbouring dwellings'.*

26. Local Policy MDC2 of the Wiltshire and Swindon Development Control Policies Development Plan Document (2009) (DPD) states that development must avoid or adequately mitigate significant adverse impacts; appropriate separation distances can be incorporated where necessary to safeguard residential amenity. Policy MCS8 of the Wiltshire and Swindon Minerals Core Strategy (2009) (MCS) states that Councils will work with all parties to address the details of the development to '*maintain an acceptable separation distance*'. This requires that several matters, including the location of screening features and control of operations to minimise pollution, are addressed. The supporting text suggests that this can include use of natural vegetation for screening. More generally, Policy MDC1 of the DPD requires that adverse impacts are 'kept to an acceptable minimum'.

27. The PPG[9] states that buffer zones should be site-specific, effective, properly justified and reasonable. Any distance should take into account the nature of the activity, the need to avoid undue sterilisation of mineral resources, location, topography, the characteristics of the various environmental effects and the mitigation measures.

28. It is therefore necessary for me to first establish whether or not condition 5 is one that could reasonably be imposed on a grant of planning permission for minerals development based on the local and national policies that protect

[8] Also referred to as a 'stand-off'
[9] Paragraph: 018 Reference ID: 27-018-20140306, Revision date: 06 03 2014

nearby residents. Following this, an assessment must be made as to whether or not the environmental viability of the operation would be affected to an unreasonable degree by imposition of this condition.

Dust emissions

29. The Air Quality Assessment[10] (AQA) focuses on the effects from nuisance dust on living conditions, including consideration of timescales, phasing, distance to receptors, wind direction and moisture content. At the screening stage it was concluded that there is potential for a significant nuisance dust impact during bund creation and that robust mitigation measures would be required, after which the risk would be low.

30. The focus of interested party concerns at appeal, including those of Compton Bassett Parish Council, is the health effects on nearby residents from fine grained particles of sand. The PPG relies on PM_{10}[11] for assessment of health effects and I have therefore also focused on this as an indicator.

31. If residential properties are within 1km of a source of emissions, the PPG states that an assessment of whether PM_{10} is likely to exceed the Air Quality Objective (AQO) should be undertaken[12]. The AQA does not explicitly conclude that the PM_{10} would not be likely to exceed the AQO. However, a qualitative assessment is provided that concludes the risks to health from PM_{10} are negligible. This is on the basis that 1) the excavated material would be of coarse particle size, 2) the baseline levels are very low, and 3) emissions would be controlled via the mitigation measures proposed for control of nuisance dust.

32. Interested parties have challenged the assumption that the excavated material would be of coarse particles size. In support of this view, two samples of sand in the vicinity of Phase 5 were obtained[13]. The particle size distribution of these was analysed in an external laboratory and certification provided. These samples contained a significant proportion of PM_{10} (13% and 38%).

33. I do not have details of the sample locations, sampling methodology, nor an assessment of their representativeness, but in the absence of any evidence to the contrary, they demonstrate that the proportion of fine grained particles in the material to be excavated could be appreciable. I appreciate that the target mineral is sand that, by definition, must fulfil certain criteria for particle size distribution, including a significant 'coarse' component. However, this does not preclude the material to be excavated, including the soils that would be used to form the bunds, from containing finer grained particles. No alternative site-specific samples or data from literature have been provided by the appellant to demonstrate that this is not the case. For these reasons, I conclude that one of the key assumptions relied upon in the AQA, specifically that PM_{10} would not cause risks to health because of the coarse particle size of the material, has not been substantiated and cannot be relied upon.

[10] Environmental Statement, Chapter 2, Air Quality (Dust) Assessment, v1, *Isopleth Limited*, May 2016
[11] Particulate matter that is less than 10 micrometres in diameter
[12] Paragraph: 032 Reference ID: 27-032-20140306, Revision date: 06 03 2014
[13] Objections to Hills Quarry Products Ltd Appeal against the Planning Conditions relating to Freeth Farm Planning Applications 16/05464 and 16/05708 (undated, attached to email dated 5 August 2022).

34. The appellant has questioned whether reliance can be placed on the submissions of interested parties when compared to the technical assessments prepared by their consultants and the MPA's technical specialists. I am in no doubt that the appellant has employed specialists in their respective fields and, for this reason, I give their findings significant weight. However, where substantive evidence is submitted by others that has a bearing on the conclusions of the specialist reports, this is a matter that I must take into consideration.

35. The AQA concluded that the baseline PM_{10} concentration is 'very low' based on Defra background pollutant maps. The PPG[14] states that existing ambient conditions should be recorded over a period sufficient to identify seasonal variations, ideally by a dust-monitoring programme. I appreciate that the site is greenfield but there are nearby quarry and landfill workings and, in light of the recommendations for site specific monitoring in the PPG, I consider that justification for not undertaking this should have been provided. For these reasons, I cannot have confidence that the baseline dust concentrations are 'very low' or confirm that a conclusion of negligible risk from PM_{10} based on this assumption is sound.

36. The appellant has relied upon mitigation measures to conclude that there would be no risk from dust to nearby receptors at any distance. Mitigation measures include grassing of bunds, wet working, and only undertaking bund construction and site restoration when the meteorological conditions are appropriate. While I do not doubt that many of the measures would help suppress PM_{10}, it is not clear whether they would be sufficient to control PM_{10} to the AQO because the recommendations for mitigation appear from the AQA to be based on the assumption that material is 'coarse'.

37. In conclusion, compelling evidence has been provided that there could be a notable proportion of PM_{10} in the excavated material and, although baseline levels may be low, this has not been confirmed on site or on a seasonal basis. The potential emissions of PM_{10} have not been specifically addressed in the AQA or Dust Management Plan (2016). I am therefore unable to conclude that the AQO would be met at the site as required by the PPG.

38. In the event that PM_{10} levels exceed the AQO then the PPG flowchart requires assessment of whether or not the impact is sufficient to justify refusal and, if not, incorporation of good practice, monitoring and control. As this appeal relates to a review of conditions, it is not open to me to refuse the application. I therefore turn to whether or not condition 5 secures good practice. Issues relating to monitoring and control of dust emissions are dealt with under 'condition 17' below.

Does a 70m buffer represent an acceptable minimum for protection from PM_{10}?

39. All parties refer to the IAQM guidance for the definition of good practice for the control of dust. Box 2 of the guidance states that adverse dust impacts from sand and gravel sites are uncommon beyond 250m and that '*in the absence of other information it is commonly accepted that the greatest impacts will be within 100 m of a source and this can include both large and small dust*

[14] Paragraph: 025 Reference ID: 27-025-20140306, Revision date: 06 03 2014

particles. Particles less than 10 µm have the potential to persist beyond 400 m but with minimal significance due to dispersion'.

40. In the AQA, the appellants quote Defra's 'Local Air Quality Management Technical Guidance (TG(09))[15] which defines 'near' for the purposes of assessment of dust emissions for health as '*within 200m*'.

41. Interested parties have presented several case studies and other sources of guidance relating to buffer zones. The minerals PPG is clear that such decisions should now be site-specific and, in the absence of detailed context, it is not possible to rely on the cases provided. However, the general point being made by interested parties, that none of these examples have a buffer zone of less than 100m from residential properties, provides some context for the current proposal.

42. In addition, the appellant suggests that significant nuisance effects from dust, particularly during bund formation, could be felt up to 100m away (section 6.3.6 of the AQA) and 200m away (section 6.5.4), hence the requirement for 'robust' mitigation measures. Nuisance dust is generally caused by larger particles; smaller particles would be expected to travel further.

43. Taking all of the above evidence above into account, I consider that 100m represents a reasonable starting point for defining best practice for the protection of health of residents from PM_{10}.

44. There is provision in Policy MCS8 of the MCS to incorporate the location and extent of screening features when establishing an acceptable separation distance from residential areas. The MPA allowed for the heavy screening from hedging and trees at a distance of approximately 70m from the properties and concluded that, with a 19m wide bund, the resulting 89m buffer would be an appropriate distance for protection of health from PM_{10}.

45. Allowing for the natural screening, which would act to some degree as a filter for dust, I conclude that a distance of 70m (89m in total) is a sensible outcome for safeguarding residents from adverse impacts from PM_{10}, and that this represents the 'acceptable minimum' required by Policies MDC1 and MDC2 of the DPD and the 'good practice' referred to in the PPG flowchart.

Noise emissions

46. The PPG states that noise levels should be no more than 10dB(A) over background levels during normal working hours[16]. According to the appellant's Noise Impact Assessment (NIA)[17], background levels are 35dB (LA90, 1hr) and the corresponding noise limit would be 45dB LAeq 1 hour (free field). I consider this to be the 'acceptable minimum' required by local policies.

47. The NIA suggests that 47dB LAeq 1 hour (free field) could be achieved during normal operations if 4m high bunds were placed at a distance of 16m from Freeth Farm Cottages. This may only represent a small exceedance, and I appreciate that the difference may be imperceptible to the human ear, but it is an exceedance nonetheless and therefore does not meet an 'acceptable

[15] Date unknown
[16] Paragraph: 021 Reference ID: 27-021-20140306, Revision date: 06 03 2014
[17] Environmental Statement, Chapter 7, Assessment of the potential noise impact from proposed winning and working of sand and gravel at Freeth Farm v5 Final, *Advance Environmental Consulting Limited*, March 2020

minimum'. I conclude that a buffer of more than 16m distance would be required to protect the residents to the guidance level during normal operations. Given that the exceedances are small at a distance of 16m, I am satisfied that 4m bunds at a distance of 70m would meet this requirement

48. The NIA predicts that the levels during temporary operations would be up to 70dB(A) LAeq 1h (free field) at Freeth Farm Cottages during temporary operations if the bunds were at a distance of 16m. This would be within the guidelines in the PPG that make provision for higher thresholds for essential site work, including bund construction, where it is clear that it would bring longer term environmental benefits to the site or its environs[18].

49. In line with the Explanatory Note of the Noise Policy Statement for England an assessment should identify whether the overall effect of the noise exposure would be above or below the significant observed adverse effect level (SOAEL) and the lowest observed adverse effect level[19]. SOAEL levels of 56dB LAeq and 71dB LAeq are provided for normal operations and temporary operations respectively in Appendix 7H of the NIA. These have not been challenged and I see no reason to disagree with them. The NIA did not conclude that these would be exceeded.

50. Interested parties have raised concerns about the noise generated by continuous pumping of water to clear the excavations. The pump is required by condition 14 to remain submerged, which should minimise the noise generated. In addition, there would be monitoring of noise levels around the site linked to mitigation measures. For these reasons, I do not consider that there would not be additional risk to living standards from the effects of noise generated by the pump.

51. I have noted concerns from interested parties regarding the effects on properties at Compton Bassett from noise. However, if the much closer houses are protected to an acceptable minimum from adverse effects, I am content that this would be protective of those further away.

52. I have not been provided with calculations of the predicted noise level at sensitive receptors using a 70m buffer. Given that at a buffer distance of 16m the SOAEL would not be exceeded, the predicted exceedance of the threshold noise level for normal operations was small and allowing for the short working hours for site operation, I consider that further information was required to justify the much larger buffer distance of 70m. For this reason, I do not consider that a buffer zone of 70m has been demonstrated as necessary to meet the guidelines in the PPG during normal operations or that it represents the 'acceptable minimum' required by Policies MDC1 and MDC2 of the DPD.

Visual impacts

53. Users of the nearby properties and Public Rights of Way would suffer some unavoidable effects from visual intrusion during development of the quarry and the high screening bunds. Policy MDC1 of the DPD requires that the visual and landscape impact of any structures is minimised. According to Policy MDC5 of the DPD proposals in proximity to settlements must also safeguard their character, setting and 'rural amenity' through the implementation of mitigation

[18] Paragraph: 022 Reference ID: 27-022-20140306, Revision date: 06 03 2014
[19] Paragraph: 020 Reference ID: 27-020-20140306, Revision date: 06 03 2014

measures that incorporate an acceptable separation distance, landscaping and planting.

54. The appellant is proposing that the bunds would surround Freeth Farm Cottages at a distance of 16m variously on 2 or 3 sides during phase 5 (approximately 39 weeks), phase 6 (38 weeks, when it would be surrounded on all 3 sides) and phase 7 (34 weeks). Bunds would also be constructed in proximity to The Freeth and The Lodge during these phases. The appellant's Landscape and Visual Impact Assessment (2020) concludes that these effects would be moderate to major during extraction. The highest effects would be during soil stripping and bund construction, but these would be temporary until the bunds were constructed.

55. The greatest effect would be on the residents of Freeth Farm Cottages. I observed that their main outlook, and what I interpret to be their sense of 'rural amenity', was provided by the open fields to the south and east. This would be severely interrupted by 4m high bunds at a distance of 16m from the garden. I am in no doubt that this would lead to a harmful loss of outlook and, in addition to the quarry workings, their sense of rural amenity, and that this would be to an oppressive degree. I accept that this is 'temporary' in the sense that it is not permanent or long-term, but the overall timescales are on a scale of years and to my mind cannot reasonably regarded as short-term in the context of someone's living conditions.

56. The only assessment of visual impact that I have before me is for the bunds at the distances above, which I have concluded would cause significant harm. I concur with the MPA that the line of trees and hedging at approximately 70m distance from Freeth Farm Cottages would provide valuable natural screening. In the absence of information to the contrary, this appears to me to be an appropriate separation distance to minimise the effects on nearby residents from the adverse visual impact from structures, and to safeguard the character, setting and rural amenity of their immediate surroundings, as required by Policies MDC1 and MDC5 of the DPD.

Economic viability

57. Paragraph 186 of the PPG states that modern conditions should not affect the economic viability of the operation, qualified by paragraph 221 which states that the key test is whether viability would be prejudiced adversely to an unreasonable degree. Paragraph 018 of the PPG[20] also states that buffer zones should take into account the need to avoid undue sterilisation of mineral resources. The local development plan does not specifically reference economic viability, beyond a requirement to ensure that economic benefits are maximised (MDC1 of the DPD).

58. The appellant has provided a financial viability assessment[21] (FVA) concluding that a buffer beyond 16m distance (35m with the bund) would cause the operation to become unviable. This was reviewed on behalf of the MPA by an external company of surveyors who identified anomalies, but overall considered the financial model reasonable[22].

[20] Paragraph: 018 Reference ID: 27-018-20140306, Revision date: 06 03 2014
[21] Viability Assessment, *Land and Mineral Management,* November 2018
[22] Gerald Eve LLP, 8 February 2019

Residual value of conveyors and shovels

59. The residual value of the conveyors was not originally included. This omission of was identified by the MPA's independent surveyor during their review.

60. A subsequent email on behalf of the appellants[23] explained that conveyor construction costs would be written off and the belt would have to be disposed of, the electrical installations could not be re-used, and that the gantry is a one-off design and would only have scrap value. The metal conveyor framework could be re-used on another site but all the rollers and moving parts would have to be replaced. The appellant's expectation is that the framework would be sold for scrap and the total re-couped value would be about £100,000. This residual value does not appear to have been included in the calculations before me. However, construction costs do seem to have been included, as summarised in the spreadsheet attached to the FVA ('Freeth Farm Capital Requirement – Summary - equipment – supply and installation').

61. An interested party has also questioned whether the residual value of two shovels should have been included. The FVA also describes two shovels (in 'Note 1'). This states that one would be purchased at the start of operations and would last the lifetime of the site. The other is already owned and the appellant estimates has three years of life remaining. The operator would therefore have to buy a new one at the start of the fourth year at a cost of £220,000, which appears to me to have been included in the calculations under 'mobile plant'.

62. The interested party has calculated that together these two shovels could have a residual value of approximately £264,000 at the end of the operation. I appreciate that this number is highly approximate, but I see no reason why the residual value of the shovels should not also have been included in the financial modelling.

63. The email sent on behalf of the appellant stated that, contrary to my understanding, the cost of a new shovel at £220,000 had not been factored in and implies that there may in fact be only one shovel. Even if this is not the £220,000 under 'mobile plant', which would add to the fixed costs, an explanation of why the residual value of a new shovel has not been included has not been provided.

64. In response to the interested party queries regarding inclusion of the residual value of equipment, the appellant referred me to paragraph 91 of the Case Officer's report, which states that '*residual equipment values have been considered'*, without providing further information. However, for the reasons above, it remains unclear to me that these have been accounted for.

65. Based on the above, I conclude that there may be significant residual value in the conveyor and shovel(s) that has not been accounted for in the FVA.

Sand density and loss

66. The appellant has used a sand density of 1.5 te/m^3 in their FVA calculations. Dr Alberry, an interested party, has provided various references from technical literature that indicate a typical density for this sand is in a range between

[23] Email from John Salmon to Nick Dunn, 29 March 2019

1.682 to 1.870 te/m^3. He has also taken a sample near one of the boreholes on site and obtained a density of 1.735 te/m^3. Although the latter is a useful indicator of the density, it has not been independently verified and is based on only one sample. However, it indicates that the density of mineral at this site could be consistent with the estimates provided from literature.

67. In defence of 1.5 te/m^3 the appellant directs me to paragraph 91 of the Case Officer's report. This states that it can be difficult to produce accurate reserve estimates due to the random chance of testing a good or bad area and that, where possible, it is usually more accurate to rely on actual sales data from a nearby area. The report goes on to suggest that, as the appellant is already working the same geological unit nearby, they will have extensive data on mineral quality and density. If this is the case, and given the evidence based questions on this matter raised by Dr Alberry, I consider it to be a significant omission that this has not been provided.

68. I have therefore been presented with some evidence that the density of local sand may be higher than 1.5 te/m^3 and nothing substantial to the contrary. The financial model is sensitive to this parameter and therefore more reliable data would ideally have been provided by the appellant. I conclude that the sand may be denser than the figure used in the FVA and , if this is the case, then this would increase the profitability of the scheme.

69. Dr Alberry also draws attention to the assumed mineral loss of 15%, which he suggests should be more akin to 10% quoting a Defra source. The appellant has not addressed this point or provided any evidence for diverging from this. Therefore, I also conclude that the losses may not be as great as those allowed for in the FVA, which would further increase the profitability of the scheme.

Other factors

70. The email sent on behalf of the appellant regarding the FVA raises additional costs that had not previously been taken into account, including rising wayleave royalty costs, and a contingency fund, including the costs of an appeal. I appreciate the appellant's general concern that costs will be rising with time, and that archaeological costs in particular could be much higher than the estimate. However, these factors have not been quantified and it is therefore difficult for me to give this uncertainty much weight. It is also difficult to put a figure on a contingency fund given that it is, by definition an unknown, and an approximate figure has not in any case been provided.

71. Dr Alberry has also provided data from the Office of National Statistics showing that the price of sand has increased since the FVA was undertaken. However, prices fluctuate and this would be part of a complex picture of rising costs elsewhere compared to the original FVA, so I have not taken this into account.

Conclusion on FVA

72. I conclude that the assessment of financial viability provided by the appellant contains potential flaws. It is possible that the profit has been underestimated because the residual value of the equipment has not been fully accounted for, the density of sand input to the calculations may be low and the extent of loss may be overestimated.

73. On the basis of the submitted evidence, I am therefore unable to conclude that increasing the buffer to 70m would make the scheme unviable.

Conclusion on condition 5

74. I have concluded that a 70m buffer from the boundaries of nearby dwellings would provide a 'minimum acceptable' living standard for nearby residents in respect of dust and would protect them from significant adverse visual impact. This would meet the requirements of local policies MDC1, MDC2 and MDC5 of the DPD. National policies and Policy MDC1 also require that the economic viability of the scheme is taken into account. It has not been demonstrated that the economic viability of the scheme would be adversely prejudiced to an unreasonable degree at a distance of 70m.

Condition 13 – noise monitoring

75. Condition 13 requires that an approved Noise Management Plan contains details of continuous monitoring. It should also list mitigation measures and procedures for addressing any complaints. The appellant has challenged the need for 1) continuous monitoring and 2) identification of measures for the control of noise emissions because these are already provided in the NIA.

Continuous monitoring

76. The MPA raised concerns that the appellant's proposal for four visits in a year could miss high noise activities. It states that continuous monitoring systems are now commonly used for long-term major projects and this assertion has not been disputed by the appellant. No specific good practice or policy have been identified by any party in relation to noise monitoring.

77. The appellant explains that several factors weigh against unattended, continuous monitoring. First of all, the PPG is not prescriptive about the amount or method of noise monitoring. This is correct, but in itself this does not weigh for or against any particular frequency of monitoring.

78. The appellant's second argument is that the low noise limits imposed would result in frequent alerts due to extraneous noise, including from farm machinery. They argues that this would introduce uncertainty when demonstrating compliance and complicate the interpretation of data, particularly when examined by untrained and inexperienced third parties.

79. I appreciate that more frequent monitoring is likely to mean more alerts when compared to the appellant's proposal for up to four visits per year or potentially following a complaint. As the objective of the scheme is to protect the living standards of nearby residents, I do not consider more frequent alerts to necessarily be negative, unless it results in disproportionate costs. I am satisfied that condition 13 is sufficiently flexible to allow a proportional approach to this issue, which is not an uncommon one for any monitoring scheme.

80. I see no good reason why personnel could not be trained to interpret the data or why someone with the relevant expertise could not be employed. On the contrary, it is an integral part of such an operation that appropriately qualified people are employed.

81. The appellant states that the Noise Monitoring Scheme was produced in accordance with recognised good practice and policy, and produced by a professional, and I do not doubt this. However, the MPA states that continuous monitoring for noise is not unusual on similar sites, and it is for the appellant to justify why this level of monitoring would not be required at this site, particularly in light of the proximity of sensitive receptors.

82. The appellant also raised concerns that a continuous monitoring scheme would result in disproportionate costs. However, no figures have been provided and I therefore have no evidence of this.

Measures to control noise emissions

83. The appellant states that condition 13 repeats requirements in respect of noise mitigation that are secured elsewhere, citing conditions 4, 10, 11, 12, 14, 15 and 16. These conditions variously refer to the plans and control working hours, noise limits, bund construction, the type of pump and vehicle noise.

84. Rather than the preventative measures delivered by the conditions listed above, condition 13 requires details of the mitigation that would be introduced if noise levels are not compliant. For this reasons, I do not find that there is duplication.

85. I appreciate that condition 13 asks for controls during working and restoration of the site and that the proposed response to complaints was provided in the original Noise Monitoring Plan. Given the lapse of time since the plan was produced and the subsequent changes to the scheme, including the introduction of a 70m buffer, I consider an update to these proposals is a reasonable and necessary requirement.

Conclusion on condition 13

86. Given the proximity of sensitive receptors I would need clear justification not to impose a high standard of noise monitoring. The MPA says that continuous monitoring schemes are not uncommon in these circumstances and I have no evidence that the burden on the operator from this would be excessive. I conclude that the requirement for continuous monitoring in condition 13 is both reasonable and necessary to ensure that the requirements of Policies MDC1 and MDC2 of the DPD, and MCS8 of the MCS are met.

87. Necessary mitigation measures in the event that noise levels are found to be non-compliant are not secured elsewhere in the planning permission and I conclude that the requirement to supply an updated version of the plan is both reasonable and necessary in the context of local policies.

Condition 17 – dust monitoring

88. Condition 17 requires that a Dust Management Plan is approved by the MPA that contains details of continuous monitoring at nearby properties. It should also list mitigation measures for control of emissions during working and restoration, and procedures for addressing any complaints. The appellant has challenged the need for 1) continuous monitoring and 2) the requirement to identify the measures for control of dust emissions because they are already outlined in the provided scheme.

Monitoring

89. The appellant's Dust Monitoring Scheme states that dust would be monitored at all times during the working day by visual assessment. If dust is seen to blow beyond the boundary the Quarry Manager would be notified and activities would cease until sufficient remedial action can be taken or the weather conditions change.

90. The MPA states that continuous dust monitoring systems are commonly used on a variety of development sites for routine site boundary or fence-line monitoring. Automated monitoring provides continuous sampling of air quality, typically at multiple locations around sites that can send alerts to on-site managers for prompt action. Concerns have been raised by interested parties that PM_{10} is invisible to the naked eye and therefore visual assessment is ineffective. The appellant has not responded to this concern.

91. The appellant states that the need for continuous dust monitoring was not required by the author of the AQA or the MPA's technical specialist. However, I note that neither have forwarded technical arguments to support this position. It is also argued by the appellant that the originally proposed scheme was designed by a professional unlike the 'subjective' decision made by the MPA. The MPA has provided an explanation of why continuous monitoring is expected and it is for the appellant to argue the alternative case, which it has not done.

92. The appellant also raised concerns that a continuous monitoring scheme would result in disproportionate costs. However, no figures have been provided and I therefore have no evidence of this.

Measures to control dust emissions

93. The appellant states that the measures to control dust are already included in the Dust Management Plan and there is therefore duplication in condition 17. Given the lapse of time, the focus on PM_{10} and changes to the scheme, including the introduction of a 70m buffer, I consider an update to these proposals, albeit under a different title, is a reasonable and necessary requirement.

Conclusion on condition 17

94. In light of the proximity of sensitive receptors and taking into account that the PM_{10} component could be significant, I would again need good justification not to impose a high standard of monitoring. The MPA says that such schemes are not uncommon and I have no evidence that the burden on the operator would be excessive. I conclude that the requirement for continuous monitoring in condition 17 is both reasonable and necessary to ensure that the requirements of Policies MDC1 and MDC2 of the DPD, and MCS8 of the MCS are met.

95. Mitigation measures in the event that dust levels are found to be non-compliant are not secured elsewhere in the planning permission and I conclude that the requirement to do this is also both reasonable and necessary to meet local policies.

Other matters

96. While the original permission is not at risk, I am able to reverse or vary any part of the decision at appeal. None of the other conditions imposed by the MPA have been explicitly challenged by other parties with the exception of the treatment of the original condition (g), which is discussed further below. However, there were numerous other issues raised by interested parties that are relevant to the new conditions and I have therefore reviewed them below in this context.

Condition (g)

97. Condition (g) of the 1956 planning permission stated that '*no excavation shall be made within 20 feet of the bridle path to the west of the area and the route of the bridle path which runs through the centre shall be maintained in a satisfactory condition'*. Counsel advice appended to Mr Smith's letter of 8 June 2020 interprets this to mean that excavation of the central Bridleway (CBAS5) was forbidden and consequently there is no permission to extract sand from the land underlying the Bridleway. It is therefore contended that the proposed removal of condition (g) would have the effect of materially changing the scope and extent of the authorised development, which would be unlawful.

98. The Working Scheme and Restoration Plans required by condition 31 provide for the temporary diversion and reinstatement of bridleway CBAS5. The MPA considers this to be an appropriate substitute for condition (g) that reflects a modern-day approach to rights of way affected by surface mineral working. The essence of the MPA's argument is that the safety of users would be compromised if the bridleway is not diverted during mineral operations, quoting HSE guidance to justify this stance. I find that this argument has merit; legislation, policy and guidance around public safety has evolved since the permission was first granted in the 1950s and a modern set of conditions should reflect this.

99. Even if condition (g) did not allow excavation of the mineral beneath bridleway CBAS5, the red line boundary remains the same and I do not consider the change would lead to a materially different development. I conclude that the Council's conditions 4 and 31, which maintain the stand-off between the bridle path to the west and temporarily divert the bridle way through the centre of the site are a reasonable substitute for a condition originally designed to protect public amenity.

Other matters raised at the appeal by interested parties

100. Questions were raised about whether there would be sufficient topsoil to create the bunds on the site. The appellant is required to build the bunds according to the conditions on the planning permission, unless otherwise agreed with the MPA. There is necessarily significant uncertainty in such calculations and I do not consider that the shortfall calculated by interested parties would make the scheme unworkable in principle.

101. Concerns were also raised by residents of Calne that they were already subject to numerous vehicles conveying waste or materials from 'the site' and that this development would add to the health risks and noise that they already suffer. The number of trips generated by this site would be low because it is proposed to move the excavated sand by conveyor. When referring to 'the

site', I consider that this is likely to be the wider mineral and waste complex, control of which is beyond the scope of this decision.

Issues raised during the application by interested parties

102. Many issues raised during the application process derived from a general objection to having a quarry at this location or questioned the need for the mineral, which is not a matter for this appeal. The permission does not allow for infilling with waste, which was raised as a concern by several parties.

103. Fears were raised about the potential effects of noise and dust on the residents of Compton Bassett. However, these properties are at a greater distance from the site than those considered above. I have concluded that the closer houses would be appropriately protected through the MPA's conditions and, as the magnitude of these effects is largely a function of distance, I am satisfied that the more distant residents would also be protected.

104. The temporary diversion of the bridleway was challenged, in part because the new route would be too boggy and it would be dangerous to horse riders. The Campaign for the Protection of Rural England (4 June 2020) said that the harm to bridleways is particularly concerning at a time when the public are being encouraged to use the rights of way networks for leisure, health and employment access. I concur with the MPA's position, specifically that an equal or greater level of disturbance would result from attempting to maintain the bridleway through the middle of the quarry and that diversion is necessary for safety reasons. Regarding the suitability of the alternative, the diversion of bridleways is controlled via a separate process under section 261 of the Town and Country Planning Act (1990), which must be followed prior to diversion. I am satisfied that alternative routes are available and that there are mechanisms beyond this appeal to ensure that the diverted route(s) is suitable.

105. General concerns were expressed about an increase in traffic along the lane to Freeth Farm and that the local road surfaces are already in a poor state of repair. However, condition 3 requires that the extracted mineral is transported by conveyor, which would minimise the increase in traffic. Condition 3 also references the plans to secure the point at which the conveyor exits the site, the traffic access and parking area. No specific concerns regarding safety in relation to the ROMP have been brought to my attention and I am satisfied that condition 3 ensures there would not be an undue level of harm caused by the traffic associated with the site.

106. Numerous interested parties have raised concerns about the permanent loss of archaeology beneath the site, suggesting that the bridleway is hundreds of years old and that a geophysical survey carried out at Freeth Farm in 2015 showed evidence of ancient ditches and enclosures. Wiltshire Council Archaeology reportedly agreed that there could be significant archaeological remains within the site, recommending that a condition be imposed that requires large scale excavation. Condition 6 requires that such a scheme is developed and approved by the MPA prior to commencement. I am satisfied that this condition addresses this issue.

107. Concerns were raised regarding the stability of the nearby dwellings post restoration, given that the nearby sand would have been removed and that the underlying clay could dry out and shrink. The Geotechnical Statement

concludes that the ground would not be compromised, and drainage and soil conditions would also be monitored during the aftercare period. A buffer zone of 70m would create a significant offset between the edge of the excavation and the properties. For these reasons, I am satisfied that the risks to nearby houses from loss of integrity and changed hydrology are negligible.

108. Several interested parties have drawn attention to the potential for increased flood risk to the adjacent farmland. The explanation for this is that the hydrology would be altered permanently at the bottom of the hill and that the rainfall dataset relied upon for the trench calculations is out of date. The appellant's report acknowledges future changes in hydrology and proposes that this is managed through the recharge scheme and the associated monitoring secured in condition 19, in addition to a unilateral undertaking to manage the drainage from the area in perpetuity. I am satisfied that these are an appropriate mechanism through which to manage the permanent changes to hydrology in the area.

109. Potential harm to biodiversity from loss of ancient hedgerows, woodland and ponds has been raised by numerous interested parties. Some loss of hedgerows and trees is inevitable within the existing permission. However, the proposals for mitigation of this have been based on ecological surveying and best practice, and these should ensure long term benefit for biodiversity in the area. The mitigation measures are secured by conditions 27, 28 and 29 of the permission. Condition 31 requires that a Landscape Ecological Management Plan is approved by the MPA to maintain levels of biodiversity.

110. Concerns were raised about potential harm to the visual amenity of the nearby North Wessex Downs Area of Outstanding Natural Area (AONB) from the proposals. The Landscape and Visual Impact AONB Assessment found that, while the works would affect landscape features, this would be temporary and that following restoration and aftercare the site would integrate back into the surrounding countryside. The report did not find that there would be significant visual effects from within the North Wessex Downs AONB, in part because it is over 700m from the works. I see no reason to disagree with these conclusions.

111. Several interested parties questioned the potential damage to local businesses, including a dairy farm, food processing business and holiday lets, particularly from the effects of dust and visual impact. The concern about dust appears to be mainly related to the conveyor belt being uncovered, which is beyond the scope of this decision. However, for the reasons above, I am satisfied that the conditions on this ROMP scheme, including for monitoring and mitigation, would be protective against the risks from dust. I am also content that the inevitable visual impacts would be screened where possible and temporary in nature.

112. Interested parties stated that the proposal was in direct contravention of the Compton Bassett Neighbourhood Plan because it would make the area a worse place to live and work for at least six years. However, the mineral site has an extant permission and the purpose of the process of revising old mineral permissions is to reduce the effects as far as reasonably possible.

113. Concerns were raised about potential infringement on the human rights of the residents of Freeth Farm Cottages because they would be surrounded by bunds. These concerns were expressed when the bunds would have been 16m

distance from the boundary of the property. There is no suggestion that there would be significant harm to the rights of the residents if the buffer zone is 70m.

Scheduled Monument

114. The remains of a medieval watermill and water management system are located in the base of the valley and are designated as a Scheduled Monument. This is by definition a designated heritage asset of national importance. Even though the Ancient Monuments and Archaeological Areas Act 1979 does not impose a statutory duty to have special regard to this, there is force in a contention that the 'national importance' of scheduled monuments is a relevant consideration. Pursuant to paragraphs 199 and 200 of the National Planning Policy Framework, 2021 (NPPF), 'great weight' should be given to the Scheduled Monument's conservation and substantial harm to it or loss of it should be wholly exceptional.

115. Although there would be no direct physical impacts to the designated asset, there is potential for an indirect physical impact resulting from changes to the local hydrology. Changes to the hydrological regime could result in the dewatering of buried deposits, which could in turn lead to their physical loss. An increase in flow could erode the earthworks that form part of the monument.

116. The MPA reports that Historic England has engaged with the appellants in pre-application discussions, undertaken a site visit and discussed the application at some length with the County Archaeologist. This has included consideration of potential changes in water level around the monument. Historic England is reportedly satisfied with the mitigation measures proposed, including condition 19, which secures management of a recharge trench above the monument and monitoring of its efficacy throughout the lifespan of the quarry. In addition, a unilateral undertaking has been provided to manage the attenuation areas, perimeter ditches and discharge controls in perpetuity. I am satisfied on the basis of the information before me that this should be protective of the Scheduled Monument.

117. The setting of the Scheduled Monument contributes to its significance by informing both the aesthetic and communal values of the asset, so any changes could result in a reduction in its significance. The Heritage Assessment identifies that there would be an adverse impact on the setting of the monument during the operational phase. This is because quarry working would be visible from the Scheduled Monument, the access to the west would be altered and there would be noise and vibration during working hours. However, the assessment concluded that the effects would not be so severe that the monument could not be appreciated or understood, and I concur with this. The effects would be temporary and would reduce over time as the quarry workings move away from the site. I also agree that the effects on the setting would be negligible once the site is restored.

118. There would therefore be 'less than substantial harm' for the purpose of comparison with the requirements of paragraph 202 of the NPPF, and this is a matter of great weight (paragraph 199). In this eventuality, the harm should be weighed against the public benefits of the proposal. Paragraph 211 of the NPPF states that great weight should also be given to the benefits of mineral

extraction. In this case, the permission already exists, and there would be temporary harm to the setting of the monument, rather than direct harm to the monument itself. For these reasons I am satisfied that the test in paragraph 202 of the NPPF is met.

Freeth Farm non-designated heritage asset

119. Paragraph 203 of the NPPF states that the effect of an application on the significance of a non-designated should be taken into account when determining an application. A balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

120. The Heritage Assessment concludes that the changes to the agricultural and rural landscape setting would lead to a minor adverse impact on the significance of Freeth Farm, but that this would be reversed upon restoration. The assessment concludes that the residual impact after restoration would be negligible, and I agree with this. The conditions on the permission, including screening bunds, would mitigate the harm to an extent. I am satisfied that there would be no significant harm to the non-designated heritage asset.

Overall Conclusion

121. I conclude that conditions 5, 13 and 17 meet the local and national policies for protection of residents from the effects of dust, noise and visual impacts. It has not been demonstrated that the economic viability would be affected to an unreasonable degree by imposition of these conditions. I am also content that the conditions meet the policy tests in paragraph 56 of the NPPF, being necessary, relevant to planning and to the development, enforceable, precise and reasonable in all other respects.

122. The appeal is accordingly dismissed.

B Davies

INSPECTOR

The Planning Inspectorate

Costs Decision

Site visit made on 29 September 2022

by B Davies MSc FGS CGeol

an Inspector appointed by the Secretary of State

Decision date: 27 February 2023

Costs application in relation to Appeal Ref: ROMP 22/2 (APP/Y3940/W/22/3296101)
Freeth Farm Quarry, Compton Bassett, Calne, SN11 8RD

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Hills Quarry Products Ltd for a full award of costs against Wiltshire Council.
- The appeal was against the determination of conditions on a mining site that differ from the proposed conditions set out in the application.

Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The appellant submits that the Council has acted unreasonably and caused it to incur unnecessary expense. The reasons given are that 1) advice from technical specialists was not followed and the Committee did not therefore have a sound technical basis on which to base its decision, 2) the viability assessment was disregarded 3) the information required by conditions 13 and 17 had already been provided 4) the majority of the noise scheme requirements were duplicated in other conditions, and 5) conditions 5, 13 and 17 do not meet the policy tests, or local and national policies.

4. The environmental statement and associated monitoring schemes were prepared by specialists and discussed with the Council's technical specialists over 4 years. However, the committee is not bound to follow the advice of its officers.

5. The minutes record presentations from several interested parties based on written technical evidence, which was also before the committee. The committee is recorded as having taken the opportunity to ask questions of these parties and the applicant, in addition to having the opportunity to visit the site. I am satisfied that it had sufficient information on which to objectively assess and understand the issues.

6. The evidence available to the committee included a review of the financial viability assessment by an independent assessor, the subsequent

correspondence between the MPA and the appellant, and detailed analysis of the figures by an interested party. For the reasons outlined in my decision, I do not consider that the committee came to an unreasonable conclusion and I have nothing before me to suggest that the viability assessment was disregarded.

7. The appellant states that the noise and dust schemes required by conditions 13 and 17 are unnecessary because appropriate schemes had already been submitted and agreed, continuous monitoring is not necessary and the majority of the requirements are duplicated in other conditions. As explained in my decision, I concluded that the committee had sufficient evidence to depart from the views of its officers and that a requirement for continuous monitoring and an update to the monitoring sand mitigation schemes was justified. I did not find that there was significant or unnecessary duplication between the conditions.

8. The appellant states that conditions 5, 13 and 17 do not meet the policy tests and are not supported by the development plan, the NPPF or PPG. No details of why this is the case have been provided and, as will be seen in the decision letter, I have concluded that the conditions meet the policy tests for conditions, and local and national policies in relation to mineral development.

Conclusion

9. In light of the above, I find that the reasons for refusal were supported by detailed evidence and that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated. An award for costs is therefore not justified.

B Davies

INSPECTOR