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Mr J Maloney

Your Ref:
Our Ref: APP/Y3940/W/18/3210938
Further appeal references at foot of letter

25 June 2021

Dear Mr Maloney,

Town and Country Planning Act 1990
Appeals by Gladman Developments Ltd
Site Address: Land north of Bath Road, Corsham, Wiltshire, SN13 0QL

I enclose a copy of our Inspector's decision on the above appeal(s).

If you have queries or feedback about the decision or the way we handled the appeal(s), you should submit them using our "Feedback" webpage at https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure.

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Thank you in advance for taking the time to provide us with valuable feedback.

Yours sincerely,

Helen Skinner
Helen Skinner

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Linked cases: APP/Y3940/X/19/3222425

The Planning Inspectorate

Appeal Decisions

Inquiry Held on 14 January 2020, 26 – 29 January 2021, 24 – 25 February 2021 and 6 April 2021

Site visit made on 22 June 2021

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 25th June 2021

Appeal A: APP/Y3940/X/19/3222425
Land North of Bath Road, Corsham, Wiltshire, SN13 0QL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Gladman Developments Ltd against Wiltshire Council.
- The application (Ref.18/10739/CLE]) is dated 9 November 2018.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The operations for which a certificate of lawful use or development is sought are existing operations constituting material operations to begin development in accordance with the planning permission granted on appeal Ref APP/Y3940/A/14/2222641 on 27 May 2015 (Council's Ref 13/05188/OUT), which was for the erection of up to 150 dwellings, up to 1,394sqm B1 offices, access, parking, public open space with play facilities and landscaping.[1]

Appeal B: APP/Y3940/W/18/3210938
Land North of Bath Road, Corsham, Wiltshire, SN13 0QL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
- The appeal is made by Gladman Developments Ltd against the decision of Wiltshire Council.
- The application Ref 13/05188/OUT, dated 15 May 2017, sought approval of details pursuant to condition No 22 of the outline planning permission granted on appeal Ref APP/Y3940/A/14/2222641 on 27 May 2015 (the planning permission).
- The application was refused by notice dated 23 August 2018.
- The development proposed is the erection of up to 150 dwellings, up to 1,394sqm B1 offices, access, parking, public open space with play facilities and landscaping.
- The details for which approval is sought are a Foundation Investigation Plan as specified in condition No 22 of the planning permission.

Decisions

1. Appeal A is dismissed.

[1] This description of the matters for which an LDC is sought was agreed by the parties when the inquiry resumed on 26 January 2021. It is essentially distilled from the covering letter sent to the Council with the application on 7 November 2018 (Core Document (CD)1.1) and which is referred to in turn in the letter to the Planning Inspectorate submitted with the appeal on 11th February 2019. However, it also takes account of the fact that the permission was granted on appeal

2. Appeal B is dismissed.

Applications for costs

3. At the inquiry applications for costs were made by Wiltshire Council and the Pickwick Association against Gladman Developments Ltd. Those applications will be the subject of separate Decisions.

Procedural matters

4. The appeals were originally allocated to another Inspector, and the inquiry was initially scheduled for Spring 2019 and July of that year. However, the start of was postponed, and illness prevented the original Inspector continuing. I was appointed in September 2019. I held a pre inquiry meeting on 30 October 2019 and the inquiry ultimately sat for 8 days commencing 14 January 2020, as detailed in the heading to these decisions. At the appellant's request, the inquiry was adjourned on the first day and the intention was to resume on 21 July 2020. However, this was prevented by the COVID-19 pandemic and that, together with my own illness, delayed resumption until 26 January 2021. The inquiry continued in a virtual format from that date, following a virtual case management conference and test event on 11 January 2021.

5. The Pickwick Association appeared as a Rule 6 party and the inquiry comprised the formal presentation of evidence and submissions, but also 'roundtable' sessions in relation to noise and acoustics, geology and groundwater, and the unilateral planning obligation.

6. Although I closed the inquiry on 6 April 2021, continuing COVID-19 restrictions delayed the site visit until 22 June 2021 and consequently the issue of my decisions was also delayed. During that accompanied site visit, I entered the Hartham Park stone mine and visited the home of Mr Hungerford at Guyer's Lodge. I also walked the appeal site itself and viewed the vertical mine shafts on adjoining land and the springs, some distance to the northwest of the appeal site, beyond Lavender Cottage.

7. In all, my site visit lasted some 3 hours and 45 minutes, 90 minutes of which were spent underground, where I witnessed operations in progress. These included: the use of a pecker to scale stone from the mine wall at a depth of some 18m below ground; the use of a Hydro Bag system to split stone, following incisions made using a Fantini saw; the use of static plant, namely a crusher in the old mine workings; the movement of stone blocks using large fork lift trucks and the general movement of plant within the mine.

8. The visit to Mr Hungerford's house was co-ordinated with the use of the pecker in an area approximately beneath the lane to the south east of the house, no more than 20m from its footprint. Whilst underground, I was shown on a map where this work would be undertaken and, for the appellant, Mr Walton stayed underground to verify what was happening.

Background to the appeals

9. A Statement of Common Ground (SOCG) signed on 6 June 2019 indicated, among other things:

    - All pre-commencement conditions on the planning permission have been successfully discharged except condition 22. Details have been approved

under other general conditions, and the last of the reserved matters approvals was granted conditionally on 8 September 2017[2];

- The conditions on the reserved matters approvals were also all discharged by 6 February 2018[3], and all these approvals predate the claimed commencement of development in August 2018;
- Accordingly, no approvals are required prior to commencement, other than under condition 22 of the planning permission and the appellants contend that this, or at least that part of the condition relating to the design of the foundations, is not a true condition precedent and does not go to the heart of the planning permission.

10. Condition 3 of the planning permission said development shall begin no later than 2 years from the date of the decision, namely by 27 May 2017, or by 1 year from approval of the last of the reserved matters, whichever is the later. The last reserved matter was approved on 8 September 2017[4], so commencement was required by 7 September 2018.

Appeal A – the LDC appeal

Main Issue

11. The main issue is whether the refusal of an LDC would have been well-founded. This will turn on whether the appellant has proved on the balance of probability that the development for which the planning permission was granted was lawfully begun before 8 September 2018 through a material operation, as defined in s56(4) of the Town and Country Planning Act 1990 (the 1990 Act).

Reasons

12. The claimed material operations are the installation of two manholes and a length of surface water drain to serve plots 98 and 99, and/or the demolition of a section of wall at the location of the site access, as approved by the planning permission.

13. The Council accepted in opening and closing that, subject to the issue of lawfulness, to which I shall return, the installation of surface water drainage on 14 August 2018 was capable of constituting a material operation.[5] The Pickwick Association accepts that, subject also to the issue of lawfulness, the demolition of part of the frontage wall carried out on 25 January 2018 would qualify as a material operation.[6] Indeed, after a short adjournment on the first day of the inquiry, Mr Simons also accepted on behalf of the Council that these demolition works could suffice.

14. For the avoidance of doubt, I am content that the demolition of part of the frontage wall fell within s56(4)(aa) of the 1990 Act, such that it could be a material operation. I saw the location of the demolition works during my site inspection. Whilst Cllr Hopkinson said "the excuse for the demolition of the wall was the installation of digital media"[7], the subjective intentions of the

[2] Core document (CD) 7.2 and paragraph 1.4.2 of the appellant's Statement of Case for appeal B.
[3] CD7.12.
[4] CD7.2.
[5] Inquiry document (ID) 76 paragraph 9 and CD6.15. Although Mr Simons referred to "14.8.19", having regard to CD6.15, this was clearly an error.
[6] ID75 paragraph 67.
[7] ID9.

developer are not relevant. Objectively, the demolition works would facilitate the approved access[8] and, in terms of s56(2), that operation was comprised in the development permitted by the planning permission.

15. That is enough but, for the sake of completeness, I will also address the drainage works. Under s56(4), material operations include "(b) the digging of a trench which is to contain the foundations, or part of the foundations of a building; and (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b)..."

16. At the pre inquiry meeting, I expressed a preliminary concern that the surface water drain went to where the foundations of the garage/outbuilding at plot 98 *would be*[9], but there was no evidence that any such foundations or foundation trench were there at the relevant time. I therefore questioned whether the drainage works could fall within s56(4)(c). However, s56(2) provides that development shall be taken to be begun on the earliest date on which any material operation comprised in the development "begins to be carried out." During the inquiry, I indicated that, having regard to those words, and the comment in *Malvern Hills DC v SSE* [1982] J.P.L. 439 that s56 (or rather its predecessor), was a "benevolent section", I was satisfied that the drainage works at least began the process of carrying out a material operation. Although the trench has been filled, I saw the manhole covers at each end of the section of drain, consistent with the photographic evidence at CD6.15.

17. Accordingly, whether on the basis of the demolition or drainage works or both, the appellants have undertaken works which are capable of constituting material operations to begin the development. Moreover, those works were carried out before the planning permission was due to expire.

18. However, having regard to *F G Whitley & Sons Co. Ltd v Secretary of State for Wales & Clwyd CC* [1992] WL 895744, in order to lawfully begin development in accordance with s56, any material operation relied on must not be in breach of a condition precedent (the *Whitley* principle). The material operations were carried out in advance of the requirements of condition 22 being discharged but, if it is not a true condition precedent, appeal A will succeed anyway. If condition 22 is a true condition precedent, the development will only have been lawfully begun if one of the recognised exceptions set out in *Whitley* and subsequent case law applies.

Is condition 22 a true condition precedent?

19. The answer to this question depends first, as a matter of interpretation, on whether the condition needs to be discharged prior to development beginning. If it does, the second test is whether, as a matter of planning judgment[10], the condition "goes to the heart of the planning permission", as expressed by Sullivan J in *R (on the application of Hart Aggregates Ltd) v Hartlepool BC* [2005] EWHC 840 (Admin).[11]

[8] See Mr Twigg's appendix 1.
[9] CD6.15 and 6.16.
[10] *Miesels v SSHCLG* [2019] EWHC 1987 (Admin), referred to at ID76 paragraph 54); and Mr Twigg's consolidated proof (ID27) at paragraph 4.3.5, as confirmed under cross examination.
[11] ID5 and ID77 paragraph 28.

20. The terms of condition 22 and condition 23, to which it refers, were agreed between the Council and the appellant in a SOCG[12] during the 2015 appeal inquiry. Given the extent to which those conditions have been dissected during my inquiry, it is worth setting them out in full:

> *"22) No development shall take place until a Foundation Investigation Plan has been submitted to and approved in writing by the local planning authority. The Foundation Investigation Plan shall include:*
>
> *i) A foundation zoning plan which will identify the type and depth of foundations across the site.*
>
> *ii) Vibration testing which shall take place during a trial mining test at appropriate locations to replicate both a typical case and a worst case of future mining both within the mine and at foundation level and bedrock level. The results of the test are then to be used by the foundation design engineer to ensure that noise and vibration levels of the foundations are at or below the criteria specified in condition 23. The vibration testing shall be carried out in accordance with a method statement which shall first have been submitted to and approved in writing by the local planning authority.*
>
> *iii) The results of the vibration testing shall be provided to the local planning authority and shall be used to design vibration and sound isolation measures (where required) at each dwelling and noise sensitive building. The foundation design for each dwelling and noise sensitive building shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved Foundation Investigation Plan.*
>
> *23) The foundations shall be designed to ensure that noise and vibration from underground mining activity shall not give rise to a noise level within any dwelling or noise sensitive building in excess of that equivalent to Noise Rating Curve 25 and vibration levels shall not exceed 0.1 to 0.2 ms-1.75 in accordance with the methodology in BS 6472-1-2008."*

21. During my inquiry, I circulated my own note[13] of what I understood to be the key principles for the interpretation of planning conditions. Whilst referring to other judgments, this relied primarily on the summary provided in *Dunnett Investments Ltd v SSCLG & East Dorset DC* [2016] EHC 534 (Admin). My note was accepted as a fair summary by all parties[14], albeit subject to the emphasis that *Dunnett* must be read together with *Trump International Golf Club Scotland Ltd v the Scottish Ministers* [2015] UKSC 74 and *Lambeth LBC v SSCLG & Aberdeen Asset Management* [2019] UKSC 33[15], to which my note referred in any event.

[12] CD7.6.
[13] ID66.
[14] ID77, paragraph 63; ID76, paragraph 13; and ID75, footnote 6.
[15] Both at ID78

22. However, whilst I have had regard to all the legal submissions on this aspect, in closing for the Pickwick Association[16], Mr Parkinson helpfully indicated that the overall approach is neatly encapsulated at paragraph 60 of Lewison LJ's judgment in the Court of Appeal in *DB Symmetry Ltd v Swindon BC* and SSHCLG [2020] EWCA Civ 1331, [2021] P.T.S.R. 432, where he said:

> *"The court asks itself what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole. This is an objective exercise in which the court will have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the purpose of the relevant words, and common sense."*

23. Having regard to the High Court's judgment in *Dunnett*, which was upheld in the Court of Appeal [2017] EWCA Civ 192, the "consent as a whole" will include the reasons for imposition of the relevant condition. Furthermore where, as in this case, the planning permission was granted on appeal (the 2015 appeal)[17], it is clear from *Hulme v SSCLG* [2011] EWCA Civ 638, that a condition can be construed in the context of the appeal decision as a whole.

24. In the 2015 appeal decision, the reason for both conditions 22 and 23 was briefly stated in the "Conditions" section as:

> *"…to protect the **living conditions of future residents** (my emphasis) of the appeal site in the event that an extant consent for underground mineral working were to be implemented in the future."* (DL169)

25. However, earlier in the decision, under the heading "Other matters", the inspector said, these conditions:

> *"…would be effective in protecting **the living conditions of future occupiers** (my emphasis). In addition they would address a concern, expressed by some parties, that the scheme could have the effect of sterilising minerals under the site."* (DL147)

26. The purpose of my added emphasis will become apparent later. However, the starting point is that the opening words of condition 22 are a very clear and express prohibition on any development taking place until a Foundation Investigation Plan (FIP) has been submitted to and approved in writing by the local planning authority. Whilst various formulations may suffice, this is unequivocally the language of a true condition precedent. Indeed, Mr Twigg accepted this under cross-examination, and in my view, there is no room for a reasonable reader to conclude otherwise.

27. There is also nothing in any of the other planning conditions which casts a different light on the meaning of condition 22. Indeed, it is notable that other conditions, namely 8 – 14 concerning access arrangements, a travel plan, a roundabout improvement scheme, a footway widening scheme, the stopping up of a field access, sewage disposal works and surface water drainage, merely prohibit *occupation* of the buildings until the details have been submitted and approved. Condition 22's prohibition on commencement appears deliberate.

[16] ID75
[17] CD7.1.

28. However, the appellant urges me to break the condition down into its constituent parts, to see if each part, specifically 22(iii), is a true condition precedent.[18] Nevertheless, condition 22 is also clear about what the FIP is; it shall include all the elements set out in 22(i), (ii) *and* (iii). The debate could end there, but the appellant relies on the fact that the second part of condition 22(iii) requires that the "foundation design for each dwelling and noise sensitive building shall be submitted to and approved in writing by the local planning authority."

29. On one level, that specific requirement could appear unnecessary, given the headline requirement of condition 22 that the FIP must be submitted to and approved in writing by the local planning authority before development takes place. However, I am not driven to conclude that the words in the second part of 22(iii) are superfluous or have no meaning. They distinguish the foundation design from the results of the vibration testing referred to in the first part of 22(iii). They only need to be *provided* to the local planning authority; the results are the results, and in that sense, there would really be nothing for the local planning authority to *approve*. On the other hand, the foundation designs informed by those results, would require approval, and 22(iii) spells that out.

30. In closing for the appellant[19], Mr Tucker QC submitted that condition 22(ii) *"imports an obligation upon the foundation design engineer to show that levels are in principle capable of being designed below those in condition 23 – which means that part of the FIP is a demonstration that in general terms such foundations can be achieved based upon the investigation, with the precise design of each of the foundations (where relevant) following at a later point in time."* However, it is not clear how the foundation design engineer would "show" this without designing foundations and submitting them for approval. Certainly condition 22(ii) does not provide a mechanism for showing this. The necessary demonstration comes, and can only really come, through the submission of the foundation designs under 22(iii). This provides the necessary assurance, prior to commencement of development.

31. Just because 22(iii) merely says the foundation designs must be submitted and approved in writing is no reason to conclude this is required at any stage *after* commencement of development. The foundation designs are part of the FIP, which the condition clearly states must be submitted and approved before any development takes place. Certainly condition 22(iii) identifies no later deadline for submission of the foundation designs.

32. With respect, I am not persuaded by the appellant's argument that, "inferentially", it must have been intended that the foundation designs need to be submitted and approved before the foundations of each building are actually constructed.[20] Such an inference runs contrary to what the condition as a whole actually says, even if, as Mr Tucker QC argued in closing, such a later trigger would be logical.[21] A condition in several parts may need dissecting to be properly understood, but the appellant's approach would disembowel, rather than dissect condition 22.

[18] ID77 paragraph 43.
[19] Ibid, at paragraph 40.
[20] Ibid, at paragraph 35.
[21] Ibid, at paragraph 40.

33. Condition 22 requires careful interpretation, but is capable of a common sense, objective reading, without the need to delve into extrinsic material to unearth any alternative intended meaning. Reading the reasons for the condition and the 2015 appeal decision as a whole, does not necessitate a departure from the natural and ordinary meaning of the words used in condition 22. The FIP includes the foundation designs under 22(iii), not just the zoning plan and investigatory elements described in 22(i) and (ii). To safeguard the living conditions of future occupiers, these designs are required to be submitted and approved before development takes place above an active mine.

34. Other aspects of condition 22 need interpreting, but I shall address those in the context of appeal B, when considering whether the submitted details can be approved as satisfying that condition.

35. Turning to the question of whether the condition goes to the heart of the planning permission, as I have said, this is a matter of planning judgement. It involves an assessment of the significance of the condition.

36. In his consolidated proof for the appellant, Mr Twigg said[22]:

> *"I do not consider that the exact design of the foundations in a residential proposal can be said to be at the 'heart' of this permission, any more than it would in respect of any residential permission."*

37. By stark contrast, Mr Smith said in his oral evidence for the Council that, the condition *"drives to the heart of the acceptability of the development"*; *"there is no way in the world that development should take place without securing amenity for future residents"*; and *"it would be a disaster if it didn't."*

38. This is not "any residential permission"; it is a permission for homes and offices above sub-terranean mining activities. The significance of this is perhaps self-evident, but it is worth quoting at some length from the officer's report, which led to the refusal of the outline application[23]:

> *"…it is clear that the operation of machinery underground does have the propensity to be heard at the surface. In the view of the Council's Environmental Health Officer, this has the potential to pose a significant risk to the residential amenity of future occupiers and must be properly addressed.*
>
> *The Officer has expressed the view that the amenity of those living or working in the new houses and offices may be adversely affected by existing authorised mining activity and has therefore recommended refusal of the application in its current form, given the lack of evidence to suggest that this is unfounded. Whilst this might, under different circumstances, be a matter that could be addressed by the appropriate phasing and or location of development within the site - both in respect of surface construction and mineral workings - and agreed at the reserved matters stage, one is mindful that this is difficult for several reasons.*
>
> *Firstly, the mining rights are held legitimately under an extant permission, for a considerable period of time and relating to almost the full extent of the site, such that their progress is likely to take a logical route from the*

[22] ID27, at paragraph 4.3.5.
[23] CD7.5, page 11.

northeast end of the existing operation. To attempt to vary this either through phasing or physical location poses the risk of sterilising the mineral altogether. Secondly the amount of development proposed at surface under the current application when combined with the other physical constraints of the site …is such as to preclude any meaningful variation in layout sufficient to avoid conflict with the minerals consent. As this impact appears unavoidable, therefore, an objection is raised on amenity grounds whilst the probable impacts of implemented mining operations on residential amenity are unknown.

…from a minerals policy perspective, it is of some concern that the issue of safeguarding has not been fully addressed, or acknowledged, in the application details. One might reasonably expect the applicant to have provided a reasoned account of why the proposed housing development will not prejudice the legitimate rights of the mining company... at this time there is insufficient evidence to demonstrate the acceptability of the development in respect of Policies C3 and NE18 of the North Wiltshire Local Plan, CP57 of the Wiltshire Core Strategy and paragraph 123 of the NPPF."

39. The Council's Environmental Health Officer's (EHO) proof to the 2015 inquiry[24] also referred to noise complaints from those living in the vicinity of the Elm Park Mine Gastard, a few miles from the appeal site. During my inquiry, Mr Hart also confirmed that the mine operator had received complaints in the past. During my visit to Mr Hungerford's house, the pecker was in use in the mine, removing material from the rock face. This was clearly audible in his ground floor kitchen and adjoining room and it could be heard at a similar volume in the second floor home office. The pitch varied, but the noise was like that of a distant pneumatic drill, albeit coming from below ground.

40. As already noted, although planning permission was granted on appeal in 2015, the appeal decision set out the need for condition 22 to protect the living conditions of future occupiers and to address the concern that the minerals under the site might be sterilised. To borrow from the judgment in *Meisels v SSHCLG* [2019] EWHC 1987 (Admin)[25], condition 22 goes *"beyond the detail of a matter that is agreed in principle: it is, instead, something without which the authority would not be content to permit the development at all"*, and therefore, this points to it going to the heart of the permission.

41. Nevertheless, I must have due regard to Mr Tucker QC's detailed submissions. In closing, he quoted the following extract from paragraph 67 of Sullivan J's judgment in *Hart Aggregates*[26]*:*

"…I believe that the statutory purpose is better served by drawing a distinction between those cases where there is only a permission in principle because no details whatsoever have been submitted, and those cases where the failure has been limited to a failure to obtain approval for one particular aspect of the development. In the former case, common sense suggests that the planning permission has not been implemented at all. In the latter case, common sense suggests that the planning permission has been implemented, but there has been a breach of condition which can be enforced against. I appreciate that these are two opposite ends of a

[24] ID59, at paragraph 12.
[25] ID76, at paragraph 54
[26] ID5.

spectrum. Each case will have to be considered upon its own particular facts, and the outcome may well depend upon the number and the significance of the conditions that have not been complied with…"

42. Against this background, Mr Tucker QC submitted that condition 22 cannot be a true condition precedent, having regard to hypothetical scenarios involving, in short: 150 houses being built and occupied where the foundation designs for all but 1 had been approved; or 1 plot having been sold, and the house having been built on that plot with approved foundations, but where the foundations for the remaining 149 had not been approved.[27] However, those scenarios do not reflect the particular facts before me.

43. Furthermore, the judgement in *Hart Aggregates* itself responded to a very individual set of facts. It required consideration of whether mineral extraction, which had taken place over a period of 34 years, was unlawful because of the failure to comply with condition 10. This required the submission and approval of a scheme of restoration before commencement of extraction. Sullivan J found that this condition was concerned, not with extraction, but with the back-filling and restoration of worked out areas following completion of extraction, and as such it did not go to the heart of the permission.[28] In terms of paragraph 67 of the judgment, the condition clearly concerned just "*one particular aspect of the development."*

44. The condition before me is of a wholly different character to that in *Hart Aggregates*, and Sullivan J warned of the dangers of taking judicial dicta out of the context of a particular case and applying them to very different circumstances. He also noted that in cases such as *Whitley*, *Leisure Great Britain Plc v Isle of Wight Council* [1999] and *Henry Boot Homes Ltd v Bassettlaw DC* [2002] EWCA Civ 983, the courts did not have to consider circumstances comparable to those in *Hart Aggregates*.

45. On a close reading of *Hart Aggregates*, the above hypothetical scenarios put forward by Mr Tucker QC do not assist the appellant. In that case, Sullivan J said that if he had found the relevant condition 10 to be a true condition precedent, he would still have concluded that there had been an effective implementation of the 1971 planning permission. He said he would:

" 90…have reached that conclusion on the basis that, limestone having been extracted from the original quarry for some 34 years and the restoration scheme mentioned in condition 10 having been overtaken by the restoration provisions in the 1989 and 1996 permissions, it would be both irrational and an abuse of power for the defendant now to commence enforcement action for the purpose of preventing or controlling extraction in the original quarry under the guise of a complaint that the claimants had, many years ago, failed to comply with condition 10…"

46. If the scenarios conceived by Mr Tucker QC arose in this appeal scheme, having regard to Sullivan J's comments[29], they could potentially be addressed on the basis that it would be irrational to take enforcement action, following *R (Hammerton) v London Underground Limited* [2002] EWHC 2307 (Admin) and *R (Prokopp) v London Underground Ltd* [2003] EWCA Civ 961. They could

[27] ID77, paragraph 45.
[28] ID5, at paragraphs 60 and 61.
[29] ID5, at paragraphs 79, 80, 87, 89 and 90.

therefore be treated as exceptions to the *Whitley* principle, beyond that which specifically applied in that case. In other words, those hypothetical scenarios do not justify a conclusion that condition 22 is not a true condition precedent. Instead, they indicate that, in some circumstance, which have not arisen here, breach of that condition precedent need not necessarily result in the entire development being unauthorised. I will later consider whether the exception, which disapplied the *Whitley* principle in in that case itself, also pertains to the case before me.

47. Having regard to *Hart Aggregates*, if a condition is expressed as a pre-condition and it goes to the heart of the permission, then it is a true condition precedent and development cannot be lawfully begun in breach of such a condition. In this case, the development was approved in principle subject to the submission and approval of the FIP to address very significant matters. These concern the living conditions of those who live and work in the development and preventing the sterilisation of mineral reserves. As far as living and working conditions are concerned, Guyer's Lodge is a large old house and its characteristics, including foundations will differ markedly from the dwellings and offices included in the appeal scheme. My observations at that house do not lead me to conclude that occupiers of the proposed buildings would be likely to experience the same level of noise from mining activities below. Nevertheless, they do underline the significance of condition 22 and the importance of addressing this issue through suitable foundation designs.

48. Still, Mr Tucker QC also suggests that if the foundation designs for the 150 houses are considered acceptable and the unilateral undertaking concerning the office foundations, to which I shall return, is considered insufficient, then condition 22(iii) will only have been discharged in part. In those circumstances, he contends that the breach of planning control would be simply the failure to demonstrate that the offices could meet the specified standard.[30]

49. Whilst, in terms of paragraph 67 of the judgment in *Hart Aggregates*, the 1,394 sqm of offices might be characterised as *"one particular aspect of the development"*, the following extracts from the judgement illustrate the sort of thing that expression was meant to cover:

> *"77. … the Court of Appeal[31] did not have to consider whether it would have been appropriate to apply the full rigour of the Whitley principle in circumstances where, for example, 315 dwellings had been erected and had been occupied for three years, but it had then been belatedly realised that precise details of the finished floor levels et cetera had not been submitted before the development commenced in accordance with condition 5. On the defendant's approach the 315 dwellings would have been erected without planning permission.*
>
> *78. Such an over-literal application of the Whitley principle would produce absurd and wholly unforeseen consequences…"*

50. The offices are a substantial and significant part of the development and the details of their foundation design, over a working mine, are important. In my planning judgment, in the context of the particular facts of this case, it goes

[30] ID77, at paragraph 46.
[31] In *Henry Boot Homes Ltd v Bassettlaw DC* [2002] EWCA Civ 983,

beyond the scope of the expression *"one particular aspect of the development"*, as exemplified in paragraph 77 of Sullivan J's judgement. In the context of appeal B, I will go on to consider whether, on the particular facts of this case, foundations designs are actually required for the offices. Nevertheless, I am not persuaded that the part of condition 22 which may relate to the offices can be isolated from the rest of that condition, or that it can be regarded as not constituting a true condition precedent.

51. In conclusion on this point, I am satisfied, as a matter of planning judgement that condition 22 as a whole, is a true condition precedent which goes to the heart of the planning permission.

Were the material operations in breach of condition 22

52. Whether or not condition 22 requires the approval of foundation details for just the dwellings or for the offices as well, the condition was not complied with before the material operations were carried out. As discussed, based on *Whitley,* the starting point is that the development was not lawfully begun, notwithstanding that material operations falling within section 56(4) were carried out.

53. However the first *Whitley* exception is that: if a condition requires that something is approved before a given date; the developer applies for that approval before that date; and approval is subsequently given, so that no enforcement action could be taken, then work that is carried out before the deadline and in accordance with the ultimately approved scheme can amount to a lawful start. The appellant relies on this exception and therefore the success of appeal A depends on that of appeal B, to which I now turn.

Appeal B – the s78 appeal

Main issue

54. As restated when the inquiry resumed on 26 January 2021, the main issue was whether the FIP would enable the developer to ensure, in accordance with condition 23, that noise and vibration levels within any dwelling or noise sensitive building would not exceed those equivalent to Noise Rating Curve 25 and vibration level 0.1 to 0.2 ms-1.75, in accordance with the methodology in BS 6472-1-2008. Among other things, this would involve consideration of:

- whether the FIP should take account of the use of blasting techniques (including the Royex Rock Breaking System) at the Hartham Park Mine; and
- the weight to be attached to a unilateral planning obligation.[32]

55. I used the words, "among other things", and it is now clear that the main "other thing", is the question of whether "noise sensitive building" means the offices, and whether condition 22(iii) requires the submission of foundation designs/vibration and sound isolation measures for them. Given that no foundation details were submitted for the offices, this matter falls to be considered first.

56. The meaning of "ensure" had been the subject of some debate between the parties. However, on the first day of the inquiry, they accepted my suggestion that, in this context, ensure means I must be satisfied beyond reasonable

[32] ID82.

doubt that the limits specified in condition 23 will not be exceeded. I made this suggestion on the basis that, in the criminal courts, where the test is 'beyond reasonable doubt', juries are told this means they must be "satisfied so that they are sure." This neatly fits the natural and ordinary meaning of the word "ensure" and the parties restated their acceptance of this approach throughout the inquiry and in closing submissions.

57. This standard is clearly higher than the 'balance of probability' test generally applied in planning appeals but, as Mr Tucker QC stressed in closing, *""reasonable" doubt is not to be equated as beyond "any" doubt, however fanciful or implausible."*[33]

Reasons

Noise sensitive buildings

58. The only buildings for which the planning permission is granted are dwellings and offices. Therefore, where conditions 22 and 23 refer to each "dwelling" and/or "noise sensitive building", "noise sensitive "building" must mean the office buildings, unless those words are entirely superfluous.

59. The matter is not completely beyond debate principally because: (i) the term noise sensitive building would clearly include dwellings; (ii) given that the only buildings permitted by the planning permission are dwellings and offices, conditions 22 and 23 could simply have referred to the dwellings and offices; and (iii) the stated reason for the conditions was, "to protect the living conditions of future residents."

60. When Mr Simons cross-examined the appellant's planning witness, Mr Twigg, he put it to him that condition 22 must have been referring to the possibility of foundation designs for the offices. Mr Twigg replied that the condition was not "intended" to apply to the offices and the reference to noise sensitive buildings was just "sloppy drafting". Whatever Mr Twigg's belief may be regarding the intention behind the words, the exercise for me is an objective one.

61. Although the stated reason for the conditions suggests they are aimed at protecting the living conditions of future "residents", I have already noted the earlier statement in the 2015 appeal decision that they would be effective in protecting the living conditions of "future occupiers." Even though "working conditions" might have been more apposite, living conditions is a broad enough term to encompass the experience of people occupying the offices. For many of us, a very large portion of our lived experience is in an office.

62. Furthermore, however noise experts might commonly use the term "noise sensitive building", and whether or not offices are defined as such in World Health Organisation guidelines, a reasonable reader using common sense would regard a building in which people need to concentrate on work as noise sensitive, in the natural, ordinary meaning of those words. What I heard in Mr and Mrs Hungerford's second floor home office, whilst the pecker was in use in the mine below, reinforces that view. In any event, it makes more sense that the term noise sensitive building means the office buildings, rather than it being just a second, and entirely superfluous reference to the dwellings.

[33] ID77, at paragraph 20.

63. To the limited extent that it could be argued the term noise sensitive building remains ambiguous, it is legitimate to look at publicly available extrinsic material.[34] The most pertinent pieces of such material are the officer's report[35], which led to the refusal of the outline planning application, the EHO's proof for the 2015 inquiry,[36] and the SOCG for that inquiry[37] which provided the Inspector with the basis of conditions 22 and 23.

64. I have already quoted at some length from the officer's report, which included an expression of concern that "…the amenity of those living or working in the new houses and offices may be adversely affected…", even though, in reason for refusal 4 this translated into merely "loss of residential amenity to future occupiers". Following that, the EHO's proof referred to protection "for future occupants to *[sic]* the houses and offices"; achieving "desired noise levels both in outside areas and within houses/offices"; the distinct possibility that noise from underground mining activity "may have an adverse impact on those living and/or working in the proposed development"; and conflict in uses of the land between the mineral owner "and the future residents and workers of the proposed development."[38] The first paragraph of the 2015 SOCG clearly spelt out the Council's concerns about "the potential for noise and vibration annoyance to any future residents and noise sensitive buildings…"

65. This publicly accessible extrinsic material clearly points to the offices being the noise sensitive buildings referred to in conditions 22 and 23. It is fair for Mr Tucker QC to say that the "focus" of the parties' attention in this appeal has been the design of suitable foundations for the residential properties. Nevertheless, whilst the reference was brief, Mr Smith's July 2019 proof for this inquiry[39] also confirmed the Council's view that the term "noise sensitive building" means the office components of the development.

66. During the roundtable session on noise, Mr Walton for the appellant referred to the process by which he and the Council's EHO and noise expert thrashed out the terms of the relevant conditions during the 2015 inquiry. He said they locked themselves away in a room, where the focus of discussion was safeguarding residential amenity. Those discussions outside the inquiry room and away from public scrutiny cannot properly inform my interpretation of these conditions. That said, Mr Walton acknowledged that the EHO asked for the expression "noise sensitive building" to be added to the conditions to cover the office buildings, albeit he said this was because of a concern that the office accommodation might be converted to another use.

67. The use of the term "noise sensitive building" might be "sloppy drafting", to use Mr Twigg's expression, in so far as it would have been simpler and clearer to say, "office buildings". However, I am not persuaded that those words were just unintentional and superfluous additions. As Carnwath LJ indicated in *Trump*[40], when explaining the "benevolent" approach to the interpretation of conditions advanced in *Carter Commercial Development Ltd v SSE* [2002] EWHC 1200 (Admin), " *…incompetent drafting should not prevent the court*

[34] ID75, at paragraph 15 and *UBB Waste Essex Ltd v Essex CC* [2019] EWHC 1924 (Admin), at paragraphs 56 and 57.
[35] CD7.5, at page 11.
[36] ID59.
[37] CD7.6.
[38] Ibid, at paragraphs 3, 5, 7 and 18.
[39] At paragraph 1.4.
[40] ID78, at paragraph 55; ID75 footnote 6; ID76, paragraph 14.

from giving the condition a sensible meaning if at all possible." In this case, it is easily possible to give the condition the sensible meaning that noise sensitive building means the office buildings.

68. The appellant has also suggested that the limits imposed by condition 23 would be too stringent for offices. For the Council, Mr Thornley-Taylor said that, having regard to information papers published by Crossrail and HS2, the criteria for offices and dwellings are not all that different. For the Pickwick Association, Mr Clarke added that mining currently takes place during the daytime and is probably as disruptive to offices as dwellings. In any event, the question for me is whether the condition applies the criteria in condition 23 to the office buildings, not whether different criteria would have been more appropriate; this is not an appeal against the imposition of the condition, or against a refusal to vary it.

69. To summarise on this point, having regard to the 2015 appeal decision as a whole, and from the perspective of a reasonable reader using common sense, the natural and ordinary meaning of the words "noise sensitive building" is that they refer to the office buildings in this development. In so far as there might be any ambiguity, this is resolved in favour of my interpretation by publicly accessible extrinsic material, and no such material contradicts that interpretation.

Does condition 22(iii) require the submission of foundation designs/vibration and sound isolation measures for the offices?

70. Mr Tucker QC points out that even if, as I have concluded, the offices are noise sensitive buildings, condition 22(iii) only says foundations shall be designed for dwellings and noise sensitive buildings *"where required".*[41] Accordingly he says this necessitates a judgement on the part of the decision maker as to whether specially designed foundations are required for the offices or any other buildings, in all the circumstances of the case.

71. Mr Tucker QC contends that foundation designs are not required for the offices because: (i) condition 22 seeks to protect living conditions and in this regard, even the Council's decision letter relating to the refusal of the application subject of this appeal, referred only to "the living conditions of future residents"[42]; (ii) the offices are located in the South West corner of the site over an area that has already been mined, and near to dwellings to the South West that do not have elastomeric bearings/specialist foundations; and (iii) the Council has been in receipt of a foundation zoning plan since 2015 which did not indicate any foundations under the office buildings, but it never raised any concerns about the adequacy of that plan.

72. I have already addressed the living conditions point (i) and concluded that the offices are noise sensitive buildings; the condition seeks to ensure acceptable conditions for those living and working in the development.

73. Regarding point (ii), Mr Twigg said the foundation designs for the offices are not required because the minerals underneath have already been extracted so there is no need to mitigate. However, although mining has taken place under the proposed office buildings' footprint, Mr Hart explained in chief and under cross-examination that this area has not yet been fully worked. Indeed, he said

[41] ID77, at paragraphs 243 – 254.
[42] CD4.1.

only about a third of the economic stone had been extracted and this was not challenged. Indeed, I was shown previously worked areas of the mine where there appeared to be material capable of extraction.

74. Whilst this scope for further extraction is the key point, Mr Hart also explained that there are static works in this area, to crush waste stone to use for backfilling, and this crusher can run from 0700 to 1700 each day, producing "quite a monotonous loud noise." I accept the acoustic impact of such activity may be less severe, and my observations during the site visit suggest that is the case. That activity does not for example involve drilling into the roof or wall, and there may be ways of minimising the impact. Nevertheless, I note Mr Twigg's evidence that although the minerals beneath the Copenacre site, further to the west, have already been worked prior to planning permission being granted, this does not preclude the risk of further nuisance to those residents arising from activity other than mineral extraction beneath that housing site.[43]

75. There is housing development to the South West of the proposed offices, outside the appeal site, which does not benefit from special foundations. However, this was permitted some 10 years ago[44]. I am not aware of all the circumstances, and the absence of specialist foundations there does not dictate how I should determine this appeal. On the evidence before me, there is a realistic prospect that the area under the proposed office buildings will be further mined, in addition to its being used for static works.

76. Turning to point (iii), it appears that prior to this appeal, the Council had not requested the inclusion of the offices on the foundation zoning plan. A letter from the appellant to the Council during this appeal also suggests the approved reserved matters pre-suppose standard strip foundations. However, as the Council's response stated[45], the reserved matters did not relate to ground-borne noise or vibration. The reserved matters approvals do not constitute the approval of standard foundations for the office buildings.

77. In any event, as Mr Tucker QC acknowledges, I am not bound by the previous actions of the Council and whether specialist foundation designs for the offices are required under condition 22(iii) is now a matter of judgment for me, as the decision maker.[46] In an exchange during cross-examination of Mr Twigg, Mr Tucker QC said, *"section 79 is not a power of review; it is a determination de novo, so I am happy to concede that you look at the information as at today's date."*

78. The fact that foundation designs for the offices were not *requested* by the Council while determining the application subject of this appeal, does not mean that they are not *required* by condition 22(iii). I am content that the offices are the noise sensitive buildings referred to; crucially, there is a realistic prospect that further significant mineral extraction could take place under those offices; and, though this is much less important, noisy operations involving static works continue in that location.

79. When I pressed Mr Parkinson in closing on the meaning of the words "where required" in condition 22(iii), he pointed out that there has been no modelling

[43] ID27, at paragraph 3.1.4.
[44] ID67 & 68.
[45] Mr Twigg's appendix 6 – the letters dated 30 January 2020 and 27 February 2020.
[46] ID77, paragraphs 243 & 252.

for the office buildings. Foundation designs have been submitted for 2 allegedly typical house types within the residential development. Whilst Mr Thornley-Taylor was more relaxed about this, Mr Clarke was concerned that the 2 house types modelled may not even be typical of all 15 house types in the development, let alone the offices[47]. He explained during the roundtable session that, relevant variables include footprints, aspect ratios, stiffness, and room dimensions. I heard no evidence to demonstrate that the 2 house types modelled would be typical of the office buildings. Mr Parry's evidence[48] also referred to "a typical room with a normal degree of soft furnishings resulting in lower reverberation time". It is not clear that this would apply to the offices.

80. Even if, which has not been established, the offices required the same vibration and sound insulation measures as the dwellings, those details would still need to be submitted and approved, because the last sentence of condition 22 requires the development to be carried out in accordance with the FIP, which includes those measures.

81. Having regard to all the submissions on this point, I am satisfied that the words "where required" in condition 22(iii) relate back to the immediately preceding words "vibration and sound isolation measures". It could be that, even with ordinary foundation designs, without special vibration and sound isolation measures, noise and vibration levels would not exceed those specified in condition 23. In those circumstances, "vibration and sound isolation measures" would not be required for the offices.[49] However, it has not been demonstrated that such measures are not required and there is no basis on which I can safely reach that conclusion. There is a reasonable doubt about whether the noise and vibration limits specified in condition 23 would be met for the offices.

82. In these circumstances, I am satisfied that, in the absence of evidence to demonstrate that no special measures are needed, condition 22(iii) does require foundation designs for the office buildings to be submitted and approved. No such designs were submitted for approval prior to the deadline for commencement of development. Accordingly, the material operations were carried out in breach of a condition precedent and the appellant has advanced no other case for an exception from the *Whitley* principle.

The weight to be attached to the unilateral undertaking (UU)

83. Mr Tucker QC submitted that, if I found the offices were noise sensitive buildings for which foundation designs were required, this does not mean the appeal must be dismissed, because the UU is in place.[50]

84. The background to that submission is that, at the start of the second day of the inquiry on 26 January 2021, Mr Tucker QC indicated that work was being done to prepare foundation plans for the employment buildings, but he acknowledged he might have an "uphill struggle" persuading me to accept them. I endorsed that expression and suggested that proposals should not evolve during the appeal process. Mr Tucker QC said he was not making an application to produce anything, and he considered the appellant's position regarding what is meant by "noise sensitive building" robust. A mechanism for introducing new plans was not therefore discussed.

[47] See his consolidated proof (ID21), at paragraphs 3.6 and 3.20.
[48] Paragraph 4.3.1.2 of his December 2019 proof and appendix 1 thereof.
[49] ID77, at paragraph 34.
[50] Ibid, at paragraph 255 and ID82.

85. No further mention had been made of office foundation plans by the time the inquiry adjourned on 25 February 2021, when all the evidence had been heard. All that remained for the final day of the inquiry, scheduled for 6 April 2021, was to hold the round table session in relation to the planning obligation and to hear closing submissions and costs applications.

86. However, on 8 March 2021, Mr Twigg sent an email on behalf of the appellant to the Planning Inspectorate and the other parties. This confirmed the appellant's primary position, which I have now rejected, that the offices are not noise sensitive buildings in terms of condition 22. It nevertheless attached an updated "Site Zonation Plan" (SZP) to show the foundation depths for the offices, and a foundation plan for the offices, both of which were to be appended to the UU, in the event that I concluded the offices were noise sensitive buildings.

87. That email said, *"Presently the UU refers to the commitment to constructed* [sic] *the offices using elastomeric bearings these drawings merely illustrate how that can be done."* That same day, I explained to all the parties via email that I had not looked at the new drawings, but sought representations from the Council and Pickwick Association about the implications for the inquiry of the appellant's position, given that I had not heard any evidence regarding specific foundation designs for the offices.

88. An exchange of several emails followed, including another on 8 March 2021, in which Mr Twigg said, among other things:

> *"We are not asserting that these foundations have been modelled. Rather our case is that this is achievable as a method of construction and that we would have to warrant and prove this to the LPA under the UU if the provisions of the S106 was* [sic] *engaged."*

89. Ultimately, an email of 10 March 2021, explained my decisions: not to accept the office foundation drawings in evidence; that I would not hear evidence regarding their merits, because it would not be fair or in the interests of the efficient administration of the appeal system; and that, if the drawings were added to the UU, I would simply hear submissions regarding the weight that could be attached to them and the UU as a whole. That email also pointed out that the absence of foundation designs for the offices had been in issue since at least 6 months before the inquiry opened and I had been given no satisfactory explanation of why this evidence should be accepted at such a late stage.

90. Mr Twigg responded that same day, saying:

> *"…As the inspector rightly records our position is emphatically that the office foundations are not caught by the ambit of condition 22 for reasons which have been explored in evidence and will be reiterated in closing submissions.*
>
> *Ultimately, the Appellant's intention was to produce the foundation drawings on the basis that they do no more than convert the words of the obligation into plan form, and not on the basis that they should generate a new round of evidence or modelling. However, in the light of the Inspector's email of this morning they will not be included in the final version of the undertaking, and I would invite the inspector to disregard them therefore. Nonetheless for the reasons set out in my email with 8th March, we will still be including the updated SZP in the UU."*

91. The completed UU provides for the foundation specification for the office buildings to be submitted to and approved by the Council prior to commencement of construction of the offices. It says the office foundation specification should meet, or rather be in general accordance with the requirements set out in a schedule attached to the UU, which includes illustrative drawings.

92. These illustrative drawings were first submitted after all the relevant evidence had been given and well in excess of 2 years after the deadline for commencement of development. To employ the words of Woolf LJ in *Whitley*, this was not a *"timeous decision to apply for approval"* where, *"through no fault of the developer"*, approval could not be obtained until after the expiration of the time limits for implementing the permission.

93. In any event, no office foundation specification has been submitted for approval and foundation designs for those buildings have not been the subject of evidence or scrutiny, and they have not been modelled. This is very different to the position regarding the dwelling foundations, where details were submitted to the Council in good time, albeit that they have been revised during the appeal. In effect, the UU is an attempt to vary condition 22, to require: (a) approval of the *dwelling* foundations prior to commencement of construction of dwellings; and (b) approval of the *office* foundations prior to commencement of construction of the office buildings. A planning obligation cannot be used to affect such a variation; this can only be achieved through an application under s73.[51]

94. I set out the substance of my concern about the intended effect of the UU when, on 22 January 2021, I circulated an agenda for the roundtable session concerning the UU, having just seen a draft. This was to give the parties, particularly the appellant, a full opportunity to consider and comment following resumption of the inquiry on 26 January. Nothing was said in the roundtable session to address the point because the appellant preferred to leave this to closing submissions. However, I find nothing in the appellant's closing submissions to answer my concern and submissions for the Council and Pickwick Association reinforce it. I therefore attach no significant weight to the UU.

Conclusion on Appeal B

95. Condition 22 requires the submission and approval of foundation details for the dwellings and the office buildings prior to commencement of development. Whether or not the details submitted and revised during the appeal for the dwellings are acceptable, with or without the prospect of blasting, no office foundation details have been submitted. The submissions of Mr Parkinson and Mr Simons that this is "fatal" and provides "an end to these proceedings" cannot be resisted. Accordingly, going on to consider all the issues surrounding the dwelling foundations would serve no useful purpose. The details submitted do not ensure that the noise and vibration levels within noise sensitive buildings, namely the offices, would not exceed those specified in condition 23. I cannot discharge condition 22 and appeal B must fail.

[51] As submitted by the Pickwick Association in closing (ID75, paragraph 79)

Conclusion on Appeal A

96. The failure on appeal B dictates the result of appeal A. The development was not lawfully begun before 8 September 2018, because the material operations were carried out in contravention of condition 22, which is a true condition precedent. This unlawful start cannot be cured through any exception to the *Whitley* principle and accordingly, the refusal of an LDC would have been well-founded and appeal A must also fail.

J A Murray

INSPECTOR

APPEARANCES

FOR THE APPELLANT: Paul Tucker QC and Piers Riley-Smith of counsel

Mr Tucker QC called	Malcolm Walton Dip Noise & Acoustics BSc MCIEH AMIOA
	Graham Parry Dip. Noise & Acoustics FIOA
	Kurt Goodman BSc(Hons) MSc MCIEEM
	Martyn Twigg MSc(Hons) MRTPI
	Gavin Campbell BSc CGeol CEng FGS MIMM
	Lauren Ballarini MSc BSc CGeol FGS
	Alan Dixon BSc Hons
	Rob Bowley BSc CEng MCIWEM

FOR THE LOCAL PLANNING AUTHORITY: Zack Simons of counsel

He called	Rupert Thornely-Taylor FIOA IIAV
	Simon Smith BA(Hons) MTP MRTPI
	Ruth Allington MSc MBA FGS CGeol EurGeol FIMMM FIQ CEng MAE QDR
	Dorcas Ephraim solicitor

FOR THE PICKWICK ASSOCIATION as Rule 6 Party: Andrew Parkinson of counsel

He called	Edward Clarke BEng(Hons) MIOA
	Ruth Allington MSc MBA FGS CGeol EurGeol FIMM FIQ CEng MAE QDR
	Simon Hart BSc MSc (MD and owner of Hartham Park Bath Stone Ltd)

INTERESTED PERSONS:

Matt Whitelaw	Local resident
Anthea White	Corsham Town Councillor
Tony Clark	Beechfield Park Trustees

John Maloney	Local resident
Maurice Holder	Local resident
Lorraine Holder	Local resident
Steve Abbott	Corsham Town Councillor
Neville Farmer	Corsham Town Councillor
Ruth Hopkinson	Wiltshire Council Ward Member
Guy Hungerford	Local resident

DOCUMENTS SUBMITTED DURING THE INQUIRY

1	Bundle of documents first submitted by email dated 8 January 2020 comprising: (1) Scientific Evaluation of Fauna Sensitivity to Blasting, D Martin 2015 (2) Extract from the Creswell Crags Museum and Visitor Centre (3) Letter to Ruth Allington dated 8 January 2020 from Blast Log Ltd in relation to the Whitwell Quarry operations in North Derbyshire in proximity to Creswell Crags.
2	Bundle of documents first submitted by email dated 10 January 2020 comprising: (1) Extract from chapter 11 of "Conserving and Creating Bat Roosts" (2) Extract from "Eurobats Publication series No. 2 (3) A paper entitled "Swarming of bats at underground sites in Britain – implications for conservation
3	Appellant's opening submissions
4	*Gillingham BC v Medway (Chatham) Dock Co. Ltd and others* [1993] QB 343 (1991)
5	*R (on the application of Hart Aggregates Ltd) v Hartlepool BC* [2005] EWHC 840 (Admin)
6	*F G Whitley & Sons Co. Ltd v Secretary of State for Wales & Clwyd CC* [1992] WL 895744
7	Council's opening submissions
8	Pickwick Association's opening submissions
9	Cllr Ruth Hopkinson's statement
10	Mr Matt Whitelaw's statement
11	Tony Clark's statement on behalf of the Beechfield Park Trustees

12	John Maloney's statement
13	Mr and Mrs Holder's statement
14	Guy Hungerford's statement
15	Revised Statement of Common Ground re noise and vibration
16	Groundwater Level Monitoring Report 18.9.20
17	Updated Groundborne Noise Assessment
18	Foundation drainage layout drawings: 7508-01-01 Rev A 7508-01-02 Rev A 7508-01-03 Rev A 7508-01-04 Rev A 7508-01-05 Rev A 7508/02
19	Supplementary proof of Mr Thornely-Taylor
20	Response from the Pickwick Assoc to the updated Groundborne Noise Assessment
21	Consolidated proof of Edward Clarke
22	Supplementary proof of Ruth Allington and appendices
23	Supplementary proof and appendices of Graham Parry re noise GDL/05/PA
24	Documents for approval appendices
25	Revised proof of Kurt Goodman re ecology GDL/01/P
26	Revised ecology appendices GDL/01/A
27	Consolidated/revised proof of Martyn Twigg re planning GDL/04/P
28	Revised planning matters appendices
29	Summary of consolidated/revised proof of Martyn Twigg re planning GDL/04/S
30	Written statement of Cllr Neville Farmer to supplement his oral evidence (no objection from the appellant)
31	Rebuttal Notes on Supplementary Proof of Evidence of Ruth Allington by Cole Easdon Consultants
32	Technical Statement: Groundwater by Wardell Armstrong
33	Email representation from Ann Barnes (Corsham resident and business owner)
34	Draft Unilateral planning obligation (see now ID 55)
35	Further revised Statement of Common Ground re noise and vibration

36	Simon Hart's rebuttal to Kurt Goodman's revised proof
37	Ruth Allington's rebuttal to Kurt Goodman's revised proof
38	Agenda for Round Table Session on noise
39	Cllr Abbott's statement
40	Cllr Farmer's statement
41	Cllr Hopkinson's second statement
42	Email clarification from Cllr Hopkinson
43	Graham Parry's review of Dr Birch's statement
44	Kurt Goodman's additional ecological information
45	DJ and NA Pollard's letter of objection (14.11.13) to planning application 13/01588/OUT
46	Hartham Park Mine lease plan and phasing boundaries
47	Mr Goodman's list of ecological surveys
48	Pickwick Association's objection to planning application 13/0158/OUT
49	Pickwick Association's proof for the 2015 inquiry
50	Email from Walter Beak Mason dated 22 December 2014
51	Letter from Gladman Developments Ltd to the Minerals Planning Authority dated 1 February 2021
52	Minerals Planning Authority's email response of 2 February 2021 to Gladman's letter of 1 February 2021
53	Statement of Common Ground re groundwater and foundation drainage (Appellant and Council)
54	Technical Statement: Groundwater, by Wardell Armstrong dated 18 February 2021
55	Signed unilateral planning obligation (undated)
56	Ruth Allington's amended supplementary proof re drainage
57	Ruth Allington's appendices RA(S) 1 – 6 to her amended supplementary proof (Drawing RA(S)5 amended)
58	Appellant's supplementary noise assessment by Wardell Armstrong for the 2015 inquiry
59	Council's noise proof for the 2015 inquiry
60	Final Statement of Common Ground re noise and vibration
61	Agenda for round table discussion of groundwater and foundation

	drainage
62	CDM statement re differential settlement between piers
63	Hydrock technical design note
64	Officer's report for application 19/07824/WCM re Land North of Rudloe Water Treatment Plant, Corsham
65	Documents referred to in Annex 1 of the Statement of Common Ground re groundwater and foundation drainage (ID53)
66	Inspector's note re the interpretation of conditions
67	Drawing LE11761-011 showing development sites in the vicinity of the ROMP area approved since 1998
68	Table of development sites in the vicinity of the ROMP area approved since 1998
69	Unilateral planning obligation engrossment 23 March 2021
70	'Comparite' version of unilateral planning obligation engrossment 23 March 2021 (ID69)
71	Council's costs application
72	Pickwick Association's costs application
73	Drawing LE11761-011 Rev A showing development sites in the vicinity of the ROMP area approved since 1998 together with mining phasing
74	Appellant's costs response
75	Pickwick Association's closing submissions
76	Council's closing submissions and costs response
77	Appellant's closing submissions
78	Authorities cited by appellant in closing: *Hulme v SSCLG* [2011] EWCA Civ *Whitley & Sons v Secretary of State for Wales* [1992] 64 P&CR 296 (See ID 6) *Hart Aggregates v Hartlepool* [2005] EWHC 840 (Admin)) (See ID 5) *Trump International Golf Club Scotland Ltd v the Scottish Ministers* [2015] UKSC *London Borough of Lambeth v SSHCLG* [2019] UKSC 33 *R(Menston Action Group) v Bradford* [2016] EWHC 127 (QB) *R v Ashford BC exp p. Shepway DC* [1998] 5 WLUK 109 *R. (on the application of Midcounties Co-operative Ltd) v Wyre Forest DC* [2009] EWHC 964 (Admin) *R (Health and Safety Executive) v Wolverhampton City Council* [2012] 1 WLR 2264 *R. (Akester) v DEFRA and Wightlink Ltd* [2010] EWHC 232 (Admin) *Brayhead (Ascot) Ltd v Berkshire CC* [1964] 2 QB 303
79	Signed but undated unilateral planning obligation
80	Pickwick Association's costs reply
81	Council's comments on the unilateral planning obligation
82	Signed unilateral planning obligation dated 6 April 2021 (submitted within the deadline agreed before the close of the inquiry)