



TERRESTRIA LIMITED

## HEATHEND SANDPIT

Heathend

Petworth

West Sussex

GU28 0JG

## STATEMENT OF CASE

in support of an appeal against the refusal by the South Downs National Park Authority to grant permission to vary Condition 2 of Planning Permission WSCC/104/10/PW/SDNP to permit the continued winning and working of minerals from Heathend Sandpit

MAY 2015

## INTRODUCTION AND BACKGROUND

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- 1.1 This Statement of Case (“Statement”) has been prepared by Terrestria Limited on behalf of Dudman Aggregates Limited (“the Appellant”). It is submitted in support of an appeal against the decision of the South Downs National Park Authority (“SDNPA”, “the Authority”) to refuse permission to extend the end date for the winning and working of minerals at Heath End Quarry (“the Quarry”).
- 1.2 The Quarry is situated at Station Road, Heath End, Petworth, West Sussex GU28 0JG. Appendix 1 shows the site location.
- 1.3 The planning application was submitted to West Sussex County Council (“WSCC”) on 19 December 2013 under Section 73 of the Town and Country Planning Act 1990. The application number is SDNP/14/00111/CND (“the S73 Application”).
- 1.4 The description of the application was “*Variation of condition 2 of planning permission WSCC/104/10/PW/SDNP to extend the end date for the winning and working of minerals from 31 December 2013 to 31 December 2018*”. The application was confirmed as being valid (by WSCC) on 8 January 2014.
- 1.5 The original application was accompanied by an application plan, referenced DG/HES/13-01, a copy of which can be found at Appendix 2 to this Statement.
- 1.6 On 7 January 2014 the Appellant received a Request for Further Information (Part 5(4) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011). The Appellant was advised that the application was being screened for the need for an Environmental Impact Assessment. The information requested was duly provided and on 4 March 2014 a screening opinion was issued by the SDNPA which concluded that,

*By reason of the size and nature of the development in this sensitive location it is considered that the development proposal is likely to have a significant impact on the environment giving rise to an Environmental Impact Assessment under the Town and Country Planning (Environmental Impact Assessment)(England) Regulations 2011*

A copy of the full screening opinion can be found at Appendix 3.

- 1.7 On 21 March 2014, Terrestria Limited (on behalf of the Appellant) wrote to the National Planning Casework Unit asking the Secretary of State to review the decision of the SDNPA and make a screening direction. The Secretary of State's decision was issued on 16 July 2014 directing that "*the proposed development...is not "EIA development" within the meaning of the Regulations*" (correspondence appended to this Statement at Appendix 4).
- 1.8 Following an accompanied site visit by the SDNPA planning case officer (late July 2014) further information was requested by the Authority (email dated 19 August 2014). The need for the information being asked for was questioned by the Appellant as it was considered that some of this (changes to working arrangements and revisions to the final restoration plan) was not relevant specifically because the application did not propose varying the method of working or the restoration of the site.
- 1.9 Of the information requested, additional topographic and bathymetrical (a survey of the underwater levels) information was provided to the SDNPA on 18 December 2014 (the delay in providing this being because an updated survey of the levels beneath the area of wet working was commissioned by the Appellant as the previous survey was some years out of date). The drawings provided at that time were as follows,

DG/HES/TOPO/14-03 Topographic survey (with OS background detail)

DG/HES/YOPO/14-04 Lake cross-sections (using Nov 2014 survey information)

The cross-sections showed the "limit of extraction" as taken from the approved plans referred to in Planning Permission Ref WSCC/104/10/PW/SDNP and as specifically referred to in Condition 13 of this permission,

*No working of sand shall take place to a depth greater than the maximum depths shown on plan H46/64B submitted with application no. DNPW/94/2569, not to a gradient steeper than 1 vertical to 3 horizontal in any face which adjoins land not to be disturbed by sand extraction during the course of the development*

Copies of these plans can be found at Appendix 5 to this Statement.

- 1.10 The submitted plan and accompanying cross-sections demonstrated that significant reserves of sand remained to be extracted both below the waterline and underlying the existing processing plant area so supporting the Appellant's S73 application to extend the period for working the remaining sand at the Quarry.
- 1.11 At this time the Authority asserted that the plans specifically referred to in Planning Permission Ref WSCC/104/10/PW/SDNP were no longer the approved plans, these having been previously superseded. This question of what constitutes the approved working plan will be considered in greater detail in Section 4 of this Statement.
- 1.12 In an email dated 13 August 2014 the Appellant was advised that there was "*an outstanding archaeology objection*" to the S73 Application which "*will need to be addressed*". Attached to this email were comments provided by the WSCC Archaeologist. A copy of these comments is provided at Appendix 6 and will be referred to in detail in Section 5 of this Statement.
- 1.13 On 17 March 2015 the decision notice in relation to the S73 Application was issued by the SDNPA refusing permission to vary Condition 2 of Planning Permission Ref WSCC/104/00111/CND to allow the winning and working of minerals to continue until 31 December 2018. A copy of the decision notice is provided (for ease of reference) at Appendix 7.

## THE APPEAL SITE

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- 2.1 Heath End Quarry is situated in the Chichester District of West Sussex, centred on OS Grid Reference SU 963185. The Quarry lies adjacent to the A285 Petworth-Chichester road at Heath End, a small cluster of approximately 20 dwellings, a farm shop (on the site of a former petrol filling station) and a builders merchant.

- 2.2 The Quarry is approximately 3.5km (2 miles) south of Petworth town centre and some 18km (11 miles) to the north-east of Chichester. The village of Duncton is just less than 1 mile to the south of the Quarry, alongside the A285. There are a number of isolated cottages and farmsteads in the immediate locality of the site.
- 2.3 Part of the eastern boundary of the Quarry adjoins the A285 whilst the southern boundary adjoins Graffham Road, a C-class road which leads westwards to Lavington Common and the villages of Graffham and Selham. The northern boundary of the site is delineated by Bridleway No 671 before the land falls towards the River Rother. To the west lies Duncton Common, an area of woodland on a gently rising landform, dissected by a small valley feature within which there is a stream which flows northwards to the River Rother.
- 2.4 Vehicular access to the Quarry is directly from the A285 using an access shared with Chandlers Building Supplies. There is no relationship between the Appellant and the builders merchants.
- 2.5 The access into the Quarry comprises a concrete road which leads down a slope into the processing plant and stocking area with the extraction area beyond. Immediately to the left on entering the site are the quarry offices and a surfaced area for loading, weighbridge operation and vehicle parking.
- 2.6 The current working area lies along the southern boundary of the Quarry, and south of an undisturbed promontory which runs east into the site from the western boundary. This prominent ridge feature is approximately 300 metres in length by 120 metres in width and has been retained undisturbed because on the top of the ridge is a tumuli which is a Scheduled Monument identified as *Duncton Common Round Barrow Cemetery* (National Heritage List Entry No 1009329). The feature was first scheduled in March 1967. Details of the listing can be found at Appendix 8 to this Statement (including a map showing the extent of the listed monument).
- 2.7 The Quarry lies wholly within the South Downs National Park.

- 3.1 Sand extraction from the appeal site has been ongoing since the mid-1950's, becoming more intensified from the start of the 1980's. The Quarry was originally known as "Sadlers Pit", so-named after the original operator.
- 3.2 In 1981, Tarmac Roadstone (Southern) Limited ("Tarmac") acquired the business of Francis Parker Limited and in doing so took on Heath End Quarry. As the land and minerals form part of the Leconfield Estate, the interest held by Tarmac was leasehold.
- 3.3 Tarmac continued to win, work and process sand from the site until the Appellant acquired the leasehold interest in December 2010.
- 3.4 On 9 May 1979 planning permission was granted authorising mineral working from land to the north and south of the ridge of land on which is sited the Scheduled Monument (Permission Ref PW/73/78) ("the 1979 Permission"). The 1979 Permission was extended by 12 months (Permission Ref DNPW/94/1572) on 4 October 1994. Further to an application made in December 1994, permission was granted on 5 July 1996 (Permission Ref DNPW/94/2569) ("the 1996 Permission") for,

*Extension to mineral workings for the extraction and processing of sand with restoration to a landscaped lake for informal recreational uses, heathland, woodland and grassland, Heath End Sandpit, Petworth*

A copy of this decision is appended at Appendix 9 of this Statement.

- 3.5 The 1996 Permission was subject to 29 conditions the following of which are considered to be relevant to this appeal,

#### Condition 1

States that the development shall proceed in accordance with the submitted application (as amended by a number of specified letters) and in accordance with the submitted plans, as identified in the condition.

#### Condition 2

States that the winning and working of minerals “*shall cease not later than 31<sup>st</sup> December 2005*”.

#### Condition 13

Requires that “*no working of sand shall take place to a depth greater than the maximum depths shown on plan H47/64B nor to a gradient steeper than 1 vertical to 3 horizontal in any face which adjoins land not to be disturbed by sand extraction during the course of the development*”.

#### Condition 23

This condition limits operations (including the movement of vehicles and plant) to land outwith the Scheduled Monument, which was identified on the approved plan H47/64B, bounded by a black, solid line. This was to protect the archaeological interest.

The remaining conditions were as would be expected for a planning permission of this nature, dealing with such matters as ensuring that noise and dust was kept to a minimum and within specified parameters, measures to mitigate against visual intrusion, hours of working, restoration and aftercare, etc.

- 3.6 It is appropriate to note that amongst other things, in comparison with the 1979 Permission, the 1996 Permission allowed the mineral working to the south of the Scheduled Monument to be deepened. The 1979 Permission had restricted the depth of extraction to 17.381 metres AOD (Condition 6).

3.7 On 10 June 2005, planning permission was granted to vary Condition 2 of the 1996 Permission so as to “*extend the end date for the winning and working of minerals from 31 December 2005 to 31 December 2010*” (Permission Ref PW/1385/05) (“the 2005 Time Extension”) (Appendix 10).

3.8 The 2005 Time Extension was to be “*carried out in accordance with...the application and plans (as modified by the under-mentioned conditions if any) submitted...on 11 March 2005...and subject to the conditions specified*”. The following conditions are noted,

Condition 1

States that “*this permission relates to the planning application...reference DNPW/94/2569*” (that is, the application leading to the granting of the 1996 Permission) and goes on to specify the approved plans, being those same plans as referred to in Condition 1 of the 1996 Permission.

Condition 2

Stipulates that the winning and working of minerals “*shall cease not later than 31 December 2010*”.

Condition 13

Requires that “*no working of sand shall take place to a depth greater than the maximum depths shown on plan H47/64B submitted with application no DNPW/94/2569, nor to a gradient steeper than 1 vertical to 3 horizontal in any face which adjoins land not to be disturbed by sand extraction during the course of the development*”.

The remaining conditions are essentially a repeat of those attached to the 1996 Permission.

3.9 On 3 March 2011, planning permission was granted to vary Condition 2 of the 2005 Time Extension so as to “*extend the end date for the winning and working of minerals from 31 December 2010 to 31 December 2013*” (Permission Ref WSCC/104/10/PW/SDNP) (“the 2011 Time Extension”) (Appendix 11).



- 3.10 The 2011 Time Extension was to be *“carried out in accordance with...the application and plans (as modified by the under-mentioned conditions if any) submitted...on 1 December 2010...and subject to the conditions specified”*. The following conditions are noted,

Condition 1

States that *“this permission relates to the planning application...reference DNPW/94/2569”* (that is, the application leading to the granting of the 1996 Permission) and goes on to specify the approved plans, being those same plans as referred to in Condition 1 of the 1996 Permission and reiterated in the 2005 Time Extension.

Condition 2

Stipulates that the winning and working of minerals *“shall cease not later than 31 December 2013”*.

Condition 13

Requires that *“no working of sand shall take place to a depth greater than the maximum depths shown on plan H47/64B submitted with application no DNPW/94/2569, nor to a gradient steeper than 1 vertical to 3 horizontal in any face which adjoins land not to be disturbed by sand extraction during the course of the development”*.

The remaining conditions are essentially a repeat of those attached to the 1996 Permission although apart from the variation of the wording of Condition 2, Conditions 3, 14 and 15 had wording amended and a new Condition 30 (requiring the establishment of a liaison group) was added.

- 3.11 The S73 Application, the refusal of which is the subject of this appeal, was submitted in December 2013 applying for a variation of Condition 2 of the 2011 Time Extension to allow the continued winning and working of the minerals until 31 December 2018. No other changes were proposed.

- 4.1 The first part of the second reason for refusal of the S73 Application is that there has been a failure *“to demonstrate how much sand reserves remain and how it (sic) will be worked and processed on site”*.
- 4.2 As indicated above (Paragraphs 1.9 and 1.10) following a survey commissioned by the Appellant in November 2014 an up-to-date topographic and bathymetric plan and sections were provided to the Authority in December 2014 which demonstrated that reserves of sand remained. The remaining reserves were assessed with reference to what the Appellant asserts is the appropriate, approved plan and in accordance with Condition 13 of the 1996 Permission as subsequently *“carried though”* in both the 2005 and 2011 Time Extension permissions.
- 4.3 The volume of sand in the ground remaining within the appeal site is calculated to be 175,000 cubic metres (circa 365,000 tonnes).
- 4.4 The Authority first queried whether sufficient reserves remained to justify a 5 year time extension in an email dated 22 October 2014 referring to a topographical survey submitted by Tarmac in January 2008 (Drawing Ref H37SVO7B). It was the Authority’s view that this drawing indicated that *“the lake has been excavated to (and in excess of in some areas) the depth indicated on the approved restoration scheme”*. It was around this point that the Appellant queried with the Authority what constituted the *“approved plan”* insofar as the permitted depth of working was concerned. In the Appellants view it was specifically stated on the various planning permissions that the maximum depth of extraction was as shown on approved drawing H47/64B. At no point had a subsequent plan been referred to in any planning permission.

4.5 On 31 October 2014 the Authority provided two documents previously submitted by Tarmac, entitled "Aftercare Scheme Summary" (dated May 2001) and "Revised Restoration Plan and Restoration Cross Sections and Aftercare Management Strategy" (dated January 2004). The latter document indicates that it supersedes the former. The Authority argued that plans referred to and accompanying these documents were to be regarded as having superseded the drawings referred to in the various planning permissions. A copy of the 2004 document is appended at Appendix 12.

4.6 In an email dated 9 January 2015 the planning case officer stated,

*"[We have] had a look at the planning history and...raised a number of concerns including [what is] the correct approved restoration plan. H47/79 was [the] last restoration plan approved through discharge of conditions before the 2010 permission was granted. The difficulty arises with the 2010 extension of time permission issued by WSCC because it erroneously reverted back to the conditions of the 1994 permission which means your client would need to resubmit all the details that have been submitted over the years.*

*Whether this means the restoration plan reverts back to H47/64B is not clear. We do not want to get into a situation where restored land along the heathland ridge is disturbed or unnecessary requirements are expected of your client due to this error. This also calls into question what is the approved final floor level of the lake which is of no doubt of concern for your client"*

4.7 At a meeting between planning officers and the Appellant on 21 January 2015 the Authority asserted that Drawing Ref H47/75D was the approved restoration plan. This drawing is an update of the drawing referred to in the January 2004 document referred to in Paragraph 4.5 above, which refers to Drawing H47/75C. The Authority's view was that Drawing H47/75D had superseded the plan referred to in the various planning permissions (specifically Drawing H47/64B) and that consequently the restoration levels shown on this plan were the approved depth limits of mineral extraction.

4.8 The assertion by the Authority that the depth of extraction as permitted by the 1996 Permission (and subsequently repeated in the two time extension permissions) is not accepted by the Appellant. The detailed reasoning for the Appellant's view will follow in Section 6 of this Statement.

4.9 The second part of the second reason for refusal of the S73 Application is that it has not been demonstrated that *"the site could be restored in accordance with the approved restoration scheme"*. It is evident from the preceding paragraphs that the ambiguity as regards what constitutes the "approved restoration scheme" is unhelpful. However, as the Appellant will argue in due course there is no reason why the restoration scheme proposed by Tarmac could not be delivered.

### REASON FOR REFUSAL 3

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5.1 The third reason for refusal of the S73 Application is that the Appellant has *"failed to demonstrate...that the proposed development would not adversely impact on the Duncton Common Round Barrow Cemetery"*.

5.2 In March 2014 the West Sussex County Council archaeologist submitted an objection to the S73 Application, a copy of which is appended to this Statement at Appendix 6.

5.3 The objection states that,

*"The application documents do not refer to the scheduled monument...there is no discussion of cultural heritage issues or the implication of continued extraction upon the scheduled monument"*

The objection goes on to state that the previous time extension permission (the 2011 Time Extension referred to above) included a condition (Condition 7) which *"re-stated the earlier requirement for heathland creation and management 'to secure the successful establishment of the heath on the land on the southern flank of the ridge surmounted by the Scheduled Ancient Monument'"*.

In addition, the County Council archaeologist expresses concern that *“the delay in bringing about the restoration of the sandpits adversely affects the immediate setting of the scheduled monument”*.

5.4 The Appellant will comment on the archaeology objection in the following section.

## APPELLANT’S CASE

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6.1 The S73 Application was solely to vary Condition 2 of planning permission WSCC/104/10/PW/SDNP in order to enable the continued winning and working of those proven sand reserves remaining within the site, reserves which had been permitted for extraction in July 1996. The application did not, and does not, propose to vary any other aspect of the permitted development. The lateral extent of working will not be changed; the depth of extraction as permitted under the 1996 Permission will not be changed; the final restoration of the site as a whole will not be changed. The application site has significant remaining, commercial reserves of sand for which there is a continuing demand and the S73 Application was submitted in order to allow the extraction of these remaining reserves, the same reserves developable under the 1996 Permission.

6.2 When granting permission for mineral development it is appropriate for the mineral planning authority to apply a time limit. Indeed it is a statutory requirement. The appropriate time limit is usually assessed having regard to the applicant’s projected annual sales and the estimated total reserve of mineral within the application area. However, both elements are by necessity estimates and projections and any variation of either can lead to a situation whereby at the end of the time limited planning permission, commercially viable mineral remains in the ground, unworked. Projected sales can be less than expected if demand falls; reserves can be higher than estimated as borehole information can be inaccurate.

- 6.3 The operators of the appeal site since the granting of the 1996 Permission (Tarmac) applied to extend the time limit on the permission on two occasions, and time extensions were granted in 2005 and 2011 extending the period permitted for extraction under the 1996 Permission from 31 December 2005 to 31 December 2013. The S73 Application subject of this appeal sought to further extend this period because sand reserves underlying the same area originally permitted by the 1996 Permission have yet to be fully extracted.
- 6.4 Turning to the third reason for refusal first of all, the objection raised by the WSCC archaeologist.
- 6.5 The S73 Application does not seek to amend, vary or in any other way alter Condition 7 of the 2011 Time Extension (as “carried forward” from the 2005 Time Extension). Any new time extension will retain this condition and hence the obligation to establish heath on the southern flank of the ridge in accordance with the submitted scheme and programme will remain. The Appellant is committed to ensuring that the site is properly restored and will continue to work with both the planning authority and the County archaeologist in order to secure restoration that will be “*mutually beneficial both to the scheduled monument and the nature conservation value of the site*” (comment taken from the archaeologist’s objection statement).
- 6.6 The Appellant does not accept that the delay in restoring those parts of the Quarry which have yet to be fully worked (and so restored) so “*adversely affects the immediate setting of the scheduled monument*” (as stated in the archaeologist’s objection statement) such that the continued extraction of the mineral should not be permitted. The setting of the scheduled monument is already compromised by the impact of housing and a builders merchant within 500 metres plus the busy A285 a similar distance to the east established over 60 years ago.
- 6.7 It is noted that the objection statement does not in any way comment on what the asserted “adverse effects” might be which makes it difficult for the Appellant to make a specific rebuttal, however, if the objection is based on the impact on the visual setting, then the Appellant’s case is that any visual impact would only be temporary and that following completion of quarrying and restoration of the site the overall impact would be beneficial to the setting of the scheduled monument, with areas that were previously sterile agricultural

land and commercial forestry being sensitively restored to conservation grassland, heathland and a lake. It should be noted that previously quarried areas to the north of the ridge (including the northern slope of the ridge feature) have already been restored.

- 6.8 In summary, therefore, it is the Appellant's case that the archaeological objection is unsustainable as the S73 Application does not seek to vary or otherwise change any aspect of the development or the final restoration as would significantly or adversely increase the impact on the scheduled monument. Whilst the extension in time of the quarrying operations will delay the final restoration of the southern section of the Quarry and the plant site, the extraction of the sand is nevertheless a temporary operation and as such is not an impact that is so significant that it warrants the application to be refused or this appeal to be dismissed.
- 6.9 Turning to the second reason for refusal.
- 6.10 In order to resolve the second reason for refusal the first question to be addressed is what is the approved depth of working? It is the Appellant's case that the approved working depth is that referred to in the 1996 Permission and subsequently re-stated in the 2005 Time Extension and the 2011 Time Extension. There is no ambiguity or inconsistency between these various planning permissions. In every case there is a condition which unequivocally states that there shall be no working of sand "*to a depth greater than the maximum depths shown on plan H47/64B*" being the plan submitted with the 1996 Permission. This same wording is found in all three planning permissions.
- 6.11 The plan referred to (H47/64B) together with the associated cross section drawing (H47/65) can be found at Appendix 13 to this Statement.
- 6.12 The cross sections show by way of a "dashed plus two dots" line what is described in the key as the limit of extraction. On examination of the sections, it is evident that the limit of extraction (where the "dashed plus two dots" line is used to delineate the side batter) extends down to the geological interface between the Folkestone Beds and the underlying Sandgate Beds. This would be perfectly logical as the commercial mineral is to be found in the Folkestone Beds which are widely worked in the region for industrial and construction sands

6.13 In the written statement which accompanied the planning application to extend the sand workings at the Quarry (subsequently granted as the 1996 Permission) it states that,

*“Within both the existing Pit and the proposed extension area it is proposed to maximise the extraction of Folkestone Bed sand by working to the base of the deposit”*

(Para 4.1.5, Page 11)

Reference is subsequently made to the plans accompanying the application, stating that Drawing H47/65 shows cross-sections which delineate *“the lateral and vertical extent to which it is proposed to extract sand”* going on to say that *“at its deepest the floor of the workings would be at 4m AOD”*.

(Para 4.1.6, Page 11)

6.14 It is noted that the cross sections differentiate between the “limit of extraction” and the “proposed restoration profile” with areas shown as having elevated restoration levels brought about by using quarry waste to raise the restored profile above the base of extraction. This demonstrates the difference between restored levels and extraction levels. The two are not necessarily interchangeable and in the Appellant’s view this point has been completely misunderstood by the Authority.

6.15 When referring to the restoration of the final lake area, the written statement states that *“the western margin of the lake would have natural shallows as the lake floor dip (sic) eastwards along the base of the Folkestone Bed deposits”*, once again confirming the intention to extract to the base of the Folkestone Bed sands (Para 11.3.1, Page 39). A copy of the written statement can be found at Appendix 14.

6.16 It is evident from the application documents that the applicant sought to maximise the commercial sand reserves within the Quarry by extracting to the base of the Folkestone Beds. This is not unsurprising. Having broken the surface to quarry the mineral then, with the exception of leaving support to boundaries, why would saleable material be left behind, unworked? To do so would not make any commercial sense and it would be an unsustainable way of working, sterilising a valuable resource for which there was, and is, a demand.



6.17 It was on the basis of the approved plan H47/64B, the accompanying approved cross sections plan H47/65 and the specific condition relating to the permitted depth of extraction that the Appellant demonstrated that there were unworked sand reserves within the Quarry as at 31 December 2013, the “end date” of the 2011 Time Extension permission. This is contrary to the Authority’s view as stated in the second reason for refusal.

6.18 As referred to above (Section 4) the Appellant understands that the Authority’s reasoning is that the approved plan H47/64B was superseded and has since been “replaced” by Drawing H47/75D. A copy of this drawing is provided at Appendix 15 to this Statement.

6.19 The Appellant would make the following observations,

- (1) This drawing is entitled “Revised Restoration Plan”. Restoration contours are shown on the drawing. As explained above (Para 6.14) restoration levels are not necessarily the same as levels of extraction. To reiterate, the restoration levels shown on the approved drawing H47/64B were not the same as the limits of extraction shown on that same approved drawing.
- (2) This drawing is dated July 2001, with minor revisions in December 2001, December 2003 and July 2004. If, as the Authority contends, this drawing has superseded the plans approved as part of the 1996 Permission, why was it not specifically referred to in either the 2005 Time Extension or the 2011 Time Extension planning permissions?
- (3) If, as the Authority contends, the levels shown on this drawing are to be regarded as being the permitted limit (depth) of extraction, then why are the contours not identified as such and why was the reference to plan H47/64B not amended in the condition approving the depth of extraction in either the 2005 Time Extension or 2011 Time Extension permission?

- 6.20 The context of drawing H47/75D (a revised restoration plan) is important. This drawing was submitted with, and referred to in, a document prepared on behalf of the then quarry operator by Copthill Environmental Land Management. Whilst it would appear that this consultancy is no longer active, research would suggest that its principal specialised in restoration and aftercare looked at from an agricultural perspective. The report which was accompanied by drawing H47/75D was entitled “Revised Restoration Plans and Aftercare Management Strategy” and it was being submitted as required by Conditions 7 and 8 of the 1996 Permission (a copy is appended at Appendix 12 to this Statement). These conditions generally refer to the progressive nature of the approved restoration, Condition 7 requiring the reinstatement of certain areas of land and the submission of detailed schemes for heathland creation and management before sand extraction from Phase 3 could commence, whilst Condition 8 required the submission of post-restoration management and aftercare programmes before extraction of sand from Phase 4 could commence. Neither Condition 7 nor 8 make any reference to extraction limits or how the mineral is to be worked.
- 6.21 It is inconceivable that the mineral operator, at the time of instructing a restoration and land management consultant to prepare schemes dealing with heathland creation and management and aftercare and post-restoration management, had any intention that the submitted plans showing restored levels were to replace the extraction plans as originally submitted. Drawing H47/75D is a plan which purports to show restoration levels, something which is entirely different from a plan showing limits of extraction, and for the Authority to claim otherwise is implausible. Even if it could be successfully argued that this drawing replaces the approved restoration plan (despite it not being specifically referred to in any planning permission relating to the appeal site) to claim that this non-approved drawing amends the limits (depth) of extraction is a step too far.
- 6.22 The second part of the Authority’s second reason for refusal is that it has not been demonstrated that the Quarry could be restored in accordance with the approved restoration scheme.

6.23 It is the Authority's view that the approved restoration plan H47/64B has been superseded by drawing H47/75D (all as referred to above). It is the Appellant's case that if the Authority (or its predecessor) was of the view that drawing H47/64B had been superseded then there was an opportunity in both 2005 and 2011 to make this clear on the face of the planning permissions granted at those times. In failing to do so then the approved drawing must be that referred to in the planning permission as being the restoration plan. This being the case, then the Quarry is capable of being restored in accordance with drawing H47/64B, the approved restoration plan.

## PLANNING POLICY

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7.1 For the sake of completeness, the decision notice refers to development control policies which shall be considered in this section.

7.2 The second reason for refusal states that,

*"the development is...contrary to Paragraph 144 of the National Planning Policy Framework (2012) and policies 51 and 52 of the West Sussex Minerals Local Plan (2003)"*

7.3 Paragraph 144 advises planning authorities on what they should take account of and ensure when determining an application for mineral extraction. The reason for refusal refers simply to the entire paragraph. In all respects, the application is compliant with those bullet points set out in Paragraph 144 that are applicable. For example, whilst the Authority appears not to have given *"great weight to the benefits of mineral extraction, including the economy"*, this is a site where there are proven, remaining reserves, in an area where there is an increasing demand for the product as the economy strengthens generally. There has been no reference by the Authority to adverse impacts caused by noise, dust or other environmental constraints. The inference must be, therefore, to the contrary that these are adequately controlled by existing conditions attached to the 2011 Time Extension permission (and the earlier permissions). The Appellant does not accept the assertion made by the Authority that the application is contrary to Paragraph 144 of the National Planning Policy Framework ("NPPF").

- 7.4 Policy 51 of the WSCC Minerals Local Plan 2003 requires applicants to include in a planning application *“a satisfactory working scheme to show how working within the site is intended to progress and to show how reclamation will follow close behind excavation”*.
- 7.5 Policy 52 requires that *“details...of the siting and appearance of buildings, machinery and plant, together with proposals for their removal when no longer required”* are to be provided.
- 7.6 The S73 Application was an application to vary the time limiting conditions attached to the 2011 Time Extension so as to allow the Quarry to be worked beyond 31 December 2013. The application did not (and does not) propose any variation to the approved working scheme which, as discussed in the previous Section of this Statement, the Appellant considers to as approved by the 1996 Permission and in the subsequent 2005 Time Extension and 2011 Time Extension permissions. It is the Appellants view that there is already an approved, satisfactory working scheme with an accompanying reclamation scheme, therefore the S73 Application was not contrary to Policy 51 of the WSCC Mineral Local Plan 2003.
- 7.7 The third reason refusal states that,
- “the development is therefore contrary to Paragraphs 126, 132, 134 and 144 of the National Planning Policy Framework (2012), Policies 10 and 11 of the West Sussex Minerals Local Plan (2003), Policy BE3 of the Chichester District Council Local Plan first review 1999, and the visions within the South Downs National Park Partnership Management Plan 2013”*
- 7.8 Paragraph 126 of the NPPF provides guidance on what local planning authorities should set out in the development plan as regards the conservation and enjoyment of the historic environment. Paragraph 132 requires *“great weight”* to be given to conserving the heritage asset which includes consideration of the impact of development within the setting of the asset. Paragraph 134 requires the public benefit of the development proposal to be taken into account in instances where the direct impact on the heritage asset is *“less than substantial”*.

- 7.9 The 1996 Permission did not directly impact on the scheduled monument. The Quarry essentially works around the ridge upon which the protected earthwork features are sited, elevated on higher ground some 30 metres above the quarry workings. Mitigation measures and the protection provided to the scheduled monument were deemed to be adequate and satisfactory at that time and subsequently when time extensions (essentially new planning permissions) were granted in 2005 and 2011. The S73 Application proposes no change to the working of the Quarry other than extending the period of working. As previously stated, it is the Appellant's case that this temporary impact on the setting of the scheduled monument is not significant and the final restoration of the Quarry would be beneficial to the setting of the monument.
- 7.10 The reference to Paragraph 144 is repeated in the third reason for refusal and has been commented on above in Paragraph 7.3.
- 7.11 Policy 10 of the WSCC Minerals Local Plan 2003 states that where mineral proposals might *"irreversibly damage statutorily designated sites of historic...interest"* then such development will only be permitted if the damage can be prevented or the need for the mineral outweighs the objections. As indicated above, the scheduled monument itself is not directly impacted by the mineral extraction or any of the quarry operations (that is, no extraction, erection of plant or buildings and no access or "tracking" across the monument by vehicles, the latter prohibition being specifically referred to in Condition 23 of the 2011 Time Extension having been "carried through" from the 1996 Permission).
- 7.12 Policy 11 of the Minerals Local Plan states that where *"nationally important archaeological remains...are affected by proposed mineral working there will be a presumption in favour of their physical preservation in situ"*. As indicated above, there is no consent to extract material from the scheduled monument and this is not proposed to change. The second part of this Policy refers to the setting of the archaeological asset and where this might be *"adversely affected by site restoration work"* then the *"integrity of the site will be afforded priority"*. Neither the working nor restoration of the Quarry will directly impact on the scheduled monument. It is the Appellant's case that the restoration of the Quarry will not adversely affect the monument but will compliment and be beneficial to the setting.

- 7.13 Policy BE3 of the Chichester District Council Local Plan is concerned with the protection of the archaeological heritage, referring to the preventing the destruction or damage to scheduled monuments and to preserving in situ. The Appellant's comments in the preceding Paragraph equally apply in respect of this Policy.
- 7.14 As regards the Partnership Management Plan: *Shaping the future of your South Downs National Park 2014-2019*, the first point to note is that this document "*does not contain planning policies, but...a framework for the emerging Park-wide Local Plan*" (Page 1 of the document). On this basis, the Appellant queries the relevance of the reference to "*the visions*" in this Plan in "support" of a reason for refusal of planning permission.
- 7.15 Notwithstanding the relevance of the Partnership Management Plan, the general "thrust" of this document as regards the historic environment is "protection from harm" with similar references as can be found in the policies of the development plan. In this regard then the Appellant's case as made in respect of the WSCC Minerals Local Plan and the Chichester District Council Local Plan equally apply to relevant references in the Partnership Management Plan.
- 7.16 In summary, the Appellant's case is that the scheduled monument will continue to be protected and conserved in the same way as it has been under the 1996 Permission and subsequent permissions. The extended period of quarrying will be temporary and any impact that this might have on the setting of the monument is outweighed by the benefits to be gained following restoration. The S73 Application is not contrary to any of the policies referred to in the third reason for refusal.

- 8.1 Following the grant of planning permission to extend the sand working (both in lateral extent and increased depth) at Heathend Quarry in 1996, and following two subsequent time extension permissions, the last of which expired December 2013, the Appellant submitted an application under Section 73 of the Planning Act for permission to extend sand extraction (in accordance with the original 1996 Permission) for a further period of 5 years (that is, to December 2018).
- 8.2 The South Downs National Park Authority refused this time extension application on the basis that (1) the Appellant had failed to demonstrate that sufficient sand reserves remained to warrant the extended life applied for, and (2) insufficient information had been provided to demonstrate that the development would not adversely impact on the scheduled monument which adjoins the Quarry.
- 8.3 The Appellant refutes the reasons given by the Authority for refusing the application. Firstly, sufficient information was provided to demonstrate that sand reserves remained at the quarry when existing levels of extraction were compared with the permitted depth of extraction as shown on the approved plans and as specifically referred to in conditions attached to the various planning permissions. Secondly, the proposed development does not directly impact on the scheduled monument. Insofar as any potential impact on the setting of the monument, the Appellant's view is that any extended impact is temporary and the restored quarry will be beneficial to the overall setting of the monument.
- 8.4 It is the Appellant's case that the time extension as applied for should be granted in order to allow the remaining sand reserves to be fully exploited. To do otherwise would be unsustainable and not utilise a proven, commercial resource for which there is a demand. The Appellant therefore respectfully requests that this appeal be allowed.

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On behalf of the Appellant