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## Appeal Decision

Inquiry Held on 21-23 January 2020

Site visits made on 20, 23 and 24 January 2020

**by Roger Catchpole BSc (hons) PhD MCIEEM**

**an Inspector appointed by the Secretary of State**

**Decision date: 7 April 2020**

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### **Appeal Ref: APP/ROMP/19/01**

### **Oxted Quarry, Chalkpit Lane, Oxted, Surrey RH8 0QW**

- The appeal is made under paragraph 9, schedule 14 (Periodic Appeals) of the Environment Act 1995 against a grant of planning permission subject to conditions.
- The appeal is made by Southern Gravel Limited against the decision of Surrey County Council.
- The application Ref: TA/2012/902, dated 7 June 2012, was approved on 21 November 2018 and planning permission was granted subject to conditions.
- The development permitted relates to the determination of new planning conditions for Oxted Quarry under the Environment Act 1995.
- The conditions in dispute are Nos 24, 25 and 26 which state that: **24)** There shall be no Heavy Goods Vehicles departures from Oxted Quarry between 0800-0900 and 1500-1600 hours Monday-Friday during school term time only for Downs Way School, St Mary's C of E Junior School and Oxted School to avoid school run times. The operator is required to obtain the dates for the current and forthcoming academic year from the schools and shall forward a copy of these dates to the County Planning Authority within 7 days of receipt; **25)** There shall be no more than an average of 76 daily Heavy Goods Vehicle (HGV) movements (38 in and 38 out) to/ from the site Monday-Saturday over any 12 month rolling period with the maximum number of HGV movements in any one day not to exceed: 112 (56 in and 56 out) Monday to Friday and 72 (36 in and 36 out) Saturday. The site operator shall maintain records of the numbers of HGVs accessing and egressing the site daily. These records shall be submitted to the County Planning Authority in April, July, October and January each year and, if requested by the County Planning Authority, be provided within 7 days of that request; and **26)** Within one month of the date of these conditions taking effect, the applicant shall have a condition survey of Chalkpit Lane carried out by a suitably qualified person and submit it within 2 weeks of completion to the County Planning Authority for approval in writing. The survey shall include carriageway, footpath, verges and kerb edges and shall be from the site accesses to, and including, the junction with Barrow Green Road. The survey is to be repeated and submitted every 6 months during the operation of the site and upon completion of the restoration of the site. The applicant is to fund any ongoing repairs adjudged to have arisen from the passage of Heavy Goods Vehicles to and from the site following discussion and agreement between the operator and the County Highway Authority.
- The reasons given for the conditions are: **24)** In order that the development should not prejudice highway safety nor cause inconvenience to other road users in accordance with Surrey Minerals Plan 2011 Core Strategy Policy MC15, Surrey Waste Plan 2008 Policy DC3, Tandridge District Local Plan 2001 Policies MO9 and MO13; and Tandridge District Core Strategy 2008 Policy CSP12; **25)** In order that the development should not prejudice highway safety and public safety nor cause inconvenience to other road users as a result of the number of heavy goods vehicles accessing the site and due to no evidence being provided by the applicant to demonstrate that the economic viability of the site would be prejudiced adversely to an unreasonable degree by a limit on the number of heavy goods vehicles in accordance with Surrey Minerals Plan 2011 Core

Strategy Policy MC15, Surrey Waste Plan 2008 Policy DC3, Tandridge District Local Plan 2001 Policies MO9 and MO13; and Tandridge district Core Strategy 2008 Policy CSP12; and **26)** In order that the development should not prejudice highway safety nor cause inconvenience to other road users in accordance with Surrey Minerals Plan 2011 Core Strategy Policy MC15, Surrey Waste Plan 2008 Policy DC3, Tandridge District Local Plan 2001 Policies MO9 and MO13; and Tandridge District Core Strategy 2008 Policy CSP12.

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## **Decision**

1. The appeal is allowed and the planning permission (Ref: TA/2012/902) for the determination of new planning conditions for Oxted Quarry at Oxted Quarry, Chalkpit Lane, Oxted, Surrey RH8 0QW granted on 21 November 2018 by Surrey County Council, is varied by deleting conditions 24, 25 and 26 and substituting the following condition for condition 25:

25) There shall be no more than an average of 100 daily Heavy Goods Vehicle (HGV) movements (50 in and 50 out) to/ from the site Monday-Saturday over any 12 month rolling period with the maximum number of HGV movements in any one day not to exceed: 200 (100 in and 100 out) Monday to Friday and 100 (50 in and 50 out) Saturday. The site operator shall maintain records of the numbers of HGVs accessing and egressing the site each day. These records shall be submitted to the County Planning Authority on the first day of April, July, October and January each year and, if requested by the County Planning Authority at any other time, shall be provided within 7 days of that request and comprise a minimum of 3 consecutive months of records.

## **Main Issues**

2. The main issues are whether:
  - the disputed conditions would affect the economic viability of the quarry; and
  - whether the disputed conditions are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

## **Reasons**

### *Background*

3. Oxted Quarry is a chalk quarry situated in the open countryside within the Metropolitan Green Belt and the Surrey Hills Area of Outstanding Natural Beauty. The site covers approximately 25 ha and is bounded by the Woldingham Ridge to the north and Chalkpit Lane to the east. The main site entrance being on the latter. Land immediately to the west and south comprises agricultural fields. A long-distance footpath, The Pilgrim's Way, runs along the southern site boundary and crosses Chalkpit Lane. Access to the eastern and western parts of this route is staggered and users are consequently obliged to walk a short distance along Chalkpit Lane in order to continue their onward journey. The M25 runs to the south, approximately 295 m from the main site access and a rail line, linking London and Horsham, runs approximately 300 m to the west.
4. The original planning permission for chalk extraction was obtained through an Interim Development Order (IDO) that was granted on 22 October 1947

(Ref: 2108/621/2). No vehicle movement restrictions or annual limits were placed on the export or import of material at that time. This continued to be the case when revised planning conditions were imposed on 11 June 1997 (Ref: TA/93/0765) under the Planning and Compensation Act 1991. This primary permission is subject to a periodic review requirement under schedule 14 of the Environment Act 1995 (the Act) and an application, dated 7 June 2012, was duly submitted to Surrey County Council.

5. The application was referred to the Planning and Regulatory Committee on 17 October 2018 and new conditions were subsequently issued on 21 November 2018 (Ref: TA/2012/902) (the Permission). The conditions, as set out at the beginning of my decision, are disputed and form the basis of this appeal. They largely follow the suggested wording in the Officer's Report to the committee, with the exception of condition 25, which is contrary to the officer's recommendation for an annual average of 74 daily movements with a daily peak no greater than 156 (78 in and 78 out) movements during the week and 114 (57 in and 57 out) on Saturdays.
6. Instead, the Committee chose to impose a slightly higher annual daily average of 76 (38 in and 38 out) movements with a lower daily peak no greater than 112 (56 in and 56 out) movements during the week and 72 (36 in and 36 out) on Saturdays. The appellant accepts that movements should be limited but has proposed a higher annual average of 100 (50 in and 50 out) daily movements with a daily peak no greater than 200 (100 in and 100 out) movements during the week and 100 (50 in and 50 out) on Saturdays. No conditions equivalent to Nos 24 or 26 were proposed by the appellant.

#### *Planning considerations*

7. Neither the principle of chalk extraction nor the importation of inert landfill are matters that fall to be considered in this appeal. This is because the right to extract chalk was established through the 1947 IDO and permission to import landfill was established, most recently, through an Environment Agency permit that was granted in 2016 (Ref: MP3736SV/ V004). The granting of this permit had no regard to offsite impacts, such as those arising from increased vehicle movement, as these are controlled by a different regulatory regime. Paragraph 183 of the National Planning Policy Framework 2019 (the Framework) advises that planning decisions should assume that environmental permitting regimes will operate effectively. The landfill is also required to restore the site to a condition suitable for agriculture and nature conservation as set out in condition 14 of the Permission and the approved drawing M11.137.09<sup>1</sup>.
8. Whilst it has been put to me that there will be insufficient voids to accommodate the current rate of infill, Ms Collett informed me that any stockpiles were due to the need to gain approval for each landfill cell before burial and that cell engineering is a rolling process. This means that stockpiles accumulate periodically and all waste imports would need to stop in the event there were no available voids. In the absence of expert evidence to the contrary, I see no reason why excessive landfill would be accumulated on the site as alleged by some interested parties. This is because it would not only compromise the restoration of the site but would also reduce the accessibility and economic viability of the remaining mineral reserves through the unnecessary overburden that would be created.

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<sup>1</sup> Appellant Document B4

9. The main policy context for this appeal is set out in paragraph 205 of the Framework which highlights the need to give great weight to the benefits of mineral extraction. A number of considerations are also set out, the most relevant being that there should be no unacceptable adverse impacts on human health and that unavoidable noise, dust and particle emissions are either controlled, mitigated or removed. These matters are not in dispute between the main parties and the Council has concluded that the Environmental Statement and subsequent submissions that dealt with such matters satisfies Part 1 and Part 2 of Schedule 4 of the Environmental Impact Assessment Regulations 2011 (as amended).
10. Turning to the detail of the minerals planning conditions, paragraph 186<sup>2</sup> of the Planning Practice Guidance (as amended) (PPG) advises that all conditions must meet the policy tests, be necessary and should not affect the economic viability of the operation. Conditions may only be used to withdraw outstanding permitted development rights if there are exceptional circumstances and supported by sound planning reasons. Paragraph 003<sup>3</sup> of the PPG establishes that the relevant policy tests are the ones set out in paragraph 55 of the Framework which state that: *'Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects'*.
11. Paragraph 221<sup>4</sup> of the PPG defines economic viability in the context of the review of mineral permissions as: *'The ability of a site to produce sufficient revenue to cover all of its operating costs (including finance costs and depreciation) and produce an appropriate return on capital. The key test is the extent to which the further restrictions imposed by new conditions would cause extra operating costs or restrict revenue to the extent that economic viability would be prejudiced adversely to an unreasonable degree'*.
12. Schedule 14, section 13(3) of the Act defines the circumstances when compensation would be paid if new conditions were to restrict working rights. Working rights are restricted when, among other things, *'the total quantity of minerals which may be extracted from, or of mineral waste which may be deposited on, the site, is restricted or reduced in respect of the mining site in question'*. The deposition of mineral waste is defined in section 336(1) of The Town and Country Planning Act 1990 (as amended) as *'any deposit of material remaining after minerals have been extracted from land or otherwise deriving from the carrying out of operations for the winning and working of minerals in, on or under land'*.
13. Given the above, it is clear that compensation is only payable insofar as any limitation is placed on chalk extraction activities. However, economic viability is cast more widely and therefore relates to the limitation of chalk extraction and the importation of inert waste material. Whilst the outcome of any restriction is well defined, the nature of the supporting evidence is not. It is also clear that the economic viability test is distinct from the tests set out in paragraph 55 of the Framework.

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<sup>2</sup> Reference ID: 27-186-20140306

<sup>3</sup> Reference ID: 21a-003-20190723

<sup>4</sup> Reference ID: 27-221-20140306

### *Economic considerations*

14. Chalk from the site is primarily sold for agricultural uses and as general fill material for construction projects. Paragraph 153 of the Officer's Report<sup>5</sup> shows that chalk sales peaked in 1983 and then fluctuated with an overall downward trend up until May 2018. This period included a temporary closure between 2011 and 2016. A more recent summary provided to the Inquiry [ID12] shows the number of chalk loads in each of the last three years (2017-2019) has been 31, 131 and 82. This evidence establishes that less than 2% of loads have been related to chalk sales over the last three years and not more than 6% of loads accounted for chalk sales in the three years prior to the site closure in 2011.
15. In its statement of case, the appellant anticipates increased chalk sales. This is based upon a written undertaking from C&P Liming Services to purchase up to 6,000 tonnes per annum and a market assessment of potential chalk sales of up to 10,000 tonnes per annum without any further investment or ancillary development within the appeal site<sup>6</sup>. Were this to occur, it is estimated that there would be a potential to produce up to 55,000 tonnes of chalk per annum. The market assessment highlights the '*relatively low and sporadic*' nature of previous chalk sales and suggests that this has been primarily due to the need to re-establish contacts since the quarry re-opened, as well as the lack of a storage building for screened chalk. The appellant has also highlighted conversations with a number of potential customers for screened chalk in the relevant proof of evidence<sup>5</sup>.
16. However, I find that this evidence lacks substance because it is based upon a speculative market assessment and informal undertakings that are not secured by any contractual obligations. The fact that the loads did not account for a significant proportion of movements prior to closure suggests that the potential re-establishment of a local market is limited and I give this more weight than the speculative assessment that is before me. Furthermore, the potential requirement for up to 25,000 tonnes of screened chalk, as set out in paragraphs 6.8 and 6.9 of the proof, is predicated on the outcome of a planning application for storage facilities that was undetermined at the close of the Inquiry. Even if this were to be approved, I find the potential revenue for chalk sales to be overstated.
17. In her proof, Ms Collett highlights the fact that the demand for agricultural chalk can occur at very short notice and is weather dependent. At the current time, customers need to undertake a large number of trips in a short period of time in order to remove sufficient dry, screened chalk. Ms Collett also highlights the fact that ad hoc requests for chalk infill are also received from time to time. As is the case for the infill, Ms Collett maintains that the cap on the number of movements, as well as the closure of the site at the beginning and end of the school day, would be a significant disincentive for chalk customers and that this would affect the quarry revenue. This was based on informal conversations and the letter from C&P Liming Services.
18. I accept that the regular confinement of hauliers within the site, as well as the effective shortening of the working day when the number of movements might need to be maximised, would be impractical and would inevitably affect the

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<sup>5</sup> Planning and Regulatory Committee Report, 17 October 2018

<sup>6</sup> Proof of Evidence, Gemma Collett

hauliers profit margins and thus their choice of site. On this basis, it seems clear that alternatives would be sought as a result of conditions 24 and 25 and that this would lead to a reduced income for the quarry. However, given the low number of movements associated with chalk sales I am not persuaded that this would have any significant impact on the viability of the quarry at the present time in the absence of any financial information to the contrary.

19. Turning to the importation of material, the infill for the site is obtained from hauliers that remove inert waste from development sites. It was established at the Inquiry that the quarry is approached on an ad hoc basis when a haulier is hired to remove material from a site and that around 80% of the infill arriving at the quarry is associated with a single haulier, Norman Road Haulage Ltd. It was also established that there are no contractual agreements capable of regulating the frequency or timing of when this material is delivered to the quarry and that this can occur at short notice. The Council did not dispute this fact and submitted no expert evidence to the contrary.
20. In its appeal statement, the appellant highlights the fact that the main operational focus since the quarry re-opened has been the restoration of worked areas. The relevant proof of evidence<sup>7</sup> sets out the operational phasing and the fact that infilling has only been completed for one of five phases. Consequently, there is an established, ongoing requirement to import waste material in order to fill the current voids as well as ones that may be created in the future whilst the permission remains active.
21. The summary of vehicle movements associated with waste imports submitted to the Inquiry [ID12] shows a declining trend between 2017 and 2019 with 9,299, 8,054 and 5,599 loads per year. As this includes a period of closure between 24 November 2018 and the 13 January 2019, the trend has an element of uncertainty although this is moderated by the fact that it included the Christmas holiday period when activity could reasonably be expected to be lower. The number of loads in the three complete years prior to closure (i.e. 2008-2010) were lower and the quarry was closed on 30 November 2011 when the previous permit limit of 100,000 tonnes per annum was reached.
22. It is clear that the importation of waste has nevertheless increased since 2008 and that this currently accounts for the overwhelming majority of vehicle movements associated with the quarry. Consequently, the restriction of haulier movements through conditions 24 and 25 would have a considerably greater potential to affect the income of the quarry from this perspective. However, the extent to which its economic viability would be prejudiced is equivocal in the absence of any financial information. The PPG advises that sufficient revenue should be maintained but without basic information on matters such as operating margins, this could not be determined during the course of the Inquiry despite the direct questions that were put to Ms Collette on this matter.
23. Given the above, I find that there is insufficient information to conclude that the conditions that have been imposed would affect the economic viability of the quarry at the current time. As such, there is no conclusive evidence that the conditions fail this particular test and their suitability turns on whether their removal or modification would cause significant harm to the safe and efficient operation of the local highway network and whether they consequently meet the tests that are set out in paragraph 55 of the Framework.

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<sup>7</sup> Proof of Evidence, Gemma Collett

*Traffic considerations*

24. The appellant operates a voluntary heavy goods vehicle (HGV) routing scheme and a speed restriction of 20 mph on Chalkpit Lane that has been formalised through a completed Unilateral Undertaking (UU) [ID16]. A Traffic Regulation Order restricts HGV access north of the main site entrance which means that all HGV traffic is obliged to leave and enter the site from the south, along Chalkpit Lane. Whilst local residents have observed quarry traffic to the north of the site, there is a regulatory mechanism to control such movements and, as such, I do not consider this further as this is not a planning matter.
25. The routing scheme gives rise to bi-directional movement of inbound and outbound quarry traffic along this road with the outbound route diverging at the junction with Barrow Green Road where HGVs then continue in an easterly direction, towards Oxted. This route takes them under a railway bridge and into a residential area with footways on either side of the road and street lighting. The route continues south and passes a junction with Chichele Road which provides access to St Mary's Church of England (C of E) School on Silkham Road. The route then passes under another railway bridge and continues south along Church Lane and East Hill Road before joining the A25. This part of the route passes a junction with Bluehouse Lane which provides access to Oxted Secondary School and Sixth Form College as well as Hazelwood Early Years and Nursery School. Consequently, there are a significant number of pedestrians and parked vehicles at the beginning and end of the school day along this part of the route, as I observed when I followed one of the HGVs down from the quarry to the A25 on the afternoon before the Inquiry began. I also made a further observation after the close of the Inquiry and noted that the pedestrians and associated vehicle movements had largely subsided by 08:30 when I arrived in the general area.
26. Turning to the inbound route, HGVs leave the A25 and travel along Barrow Green Road which is a rural, single carriageway that serves a number of properties, including the Tandridge Riding Centre. This road is also part of the Surrey Cycle Network. Consequently, both horse riders and cyclists regularly use the carriageway along this part of the route. The lorries then turn left onto Chalkpit Lane where a small number of residential properties are located, as well as an access to Oxted Scout Hut. The carriageway between this junction and the railway bridge is used by pedestrians because no footway is present. The route between the railway bridge and the M25 bridge to the north is predominantly residential with houses flanking the road on either side. A footway is present on the eastern side of the road which means that pedestrians from the properties on the western side are obliged to cross the road in order to continue their onward journeys. Although the route to the north of the M25 bridge is rural, with only a few houses adjacent to the quarry entrance, pedestrians walking the Pilgrims Way are nevertheless present who use a short section of carriageway when passing between footpath 576 and footpath 94. This section of road is also popular with cyclists as it provides a steeply climbing route onto the Woldingham Ridge to the north of the quarry.
27. In his proof, Mr Stokes highlights the fact that the Manual for Streets recommends a minimum road width of 5.5 m for two HGVs to pass and 4.8 m for an HGV to pass a car. He notes that HGVs have to either mount the verges or footways or reverse where the road narrows and that this occurs along approximately 65% of its length. Numerous local residents have reported this

to be the case and the physical damage I observed attests to this fact. Mr Stokes characterises reversing manoeuvres as particularly hazardous in the absence of a 'linesman' and that there is consequently only very limited capacity for HGV movement along Chalkpit Lane. However, it was established at the Inquiry that most HGVs have a rear camera which permits safe reversing. In his proof, Mr Stokes goes on to highlight the proximity of local schools along the route as well as the volume of complaints generated by the unrestricted movement of HGVs which culminated in two petitions in 2008 and the commissioning of road improvement report by TPS<sup>8</sup> that has remained largely unimplemented. This study noted peak daily flows of between 140-160 movements (70 in and 70 out – 80 in and 80 out). The relationship between the level of complaint and number of movements is also summarised in two appendices associated with the Council's appeal statement (i.e. F2 and F3). On the basis of this evidence, Mr Stokes maintains that limiting the daily maximum to 112 movements would eliminate almost all the peaks during the periods over which complaints were received (i.e. 2007-2011 and 2016-2019).

28. A number of statements were made to the Inquiry by interested parties highlighting the concerns of the local community [ID7-ID11]. I have also noted the written representations in response to the original application and this appeal. Oral submissions drew my attention to two undocumented accidents. One was in 2008 where an HGV left the carriageway of Chalkpit Lane and another involved a horse that was 'spooked' by an HGV on Barrow Green Road that had to be euthanised because of a resulting fall. It was unclear whether a quarry vehicle was involved and I note that Norman Road Haulage drivers were also praised in the same email from the Tandridge Riding Centre. The failure of drivers to follow the routing scheme was also a common complaint with quarry vehicles being noted in Woldingham and on the restricted part of Chalkpit Lane to the north of the quarry. One of the most frequently raised concerns was the fear and intimidation caused by the close proximity of passing HGVs which I witnessed at key locations that were pointed out to me by the local community during one of the site visits. A number of other issues were highlighted in oral submissions that included, among other things, the curtailment of children being able to walk independently to school because of safety concerns, the positioning of HGVs when passing under railway bridge arches, the capacity of the wider road network within the Godstone Ward with regard to matters relating to the emerging Tandridge Local Plan, the need for a lower daily limit than the one imposed by the Council, damage to the highway and road verges, vehicles travelling in convoy and regular traffic delays.
29. In his proof, Mr Hurlstone has found no technical justification for the lower number of movements imposed by the Council nor the restriction of movement at the beginning or end of the school day. He notes that the vehicles associated with the quarry have a good safety record and that there are no recorded personal injury incidents on Chalkpit Lane with the exception of one in 2010 where a car drove into a stationary HGV. Two other HGV collisions are highlighted in 2007 on the A25 and in 2011 at the priority junction between the A25 and Barrow Green Road. Mr Hurlstone goes on to note that a review of collision data over the last 20 years indicates that there have been no other personal injury accidents involving HGVs over 7.5 tonnes along either the inbound or outbound routes to the quarry or the continuation of Chalkpit Lane

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<sup>8</sup> Heavy Goods Vehicle (HGV) Routes in Oxted Investigation Report. TPS, 21 August 2008

- to the north. He asserts that this demonstrates that historic HGV movements up to and beyond the level proposed by the appellant can be accommodated without a significant effect on road safety. Mr Hurlstone maintains that national design standards<sup>9</sup> for a busy high street are such that an hourly capacity of 1,250 vehicles, which includes 186 HGV movements, would not be breached according to a road traffic survey carried out between 22-28 March 2019. This showed that the highest peak of 677 movements on Church Lane represented approximately 54% of the hourly capacity. He goes on to note that the survey point nearest to the schools indicates that this was about 37% of the total hourly capacity.
30. The use of these standards was disputed but even though the parties differ on how the capacity of Chalkpit Lane should be defined using the DMRB standards, the estimated capacity nevertheless exceeds the observed traffic flows in both instances with the Council arriving at an hourly capacity of 1,020 movements. As highlighted in the cross examination of Mr Stokes, his advice to members of the Planning and Regulatory Committee, dated 17 October 2018, was that *'highway capacity itself is not a concern'*. Whilst only a snapshot, I observed that the traffic flows were not impeded to any significant extent with any queues clearing in under a minute along the inbound and outbound routes on more than one occasion when HGVs were present. In cross examination, Mr Stokes clarified that his proof was not about general road capacity but just about HGV capacity in relation to the restricted width of the carriageway.
31. The Transport Technical Note (TTN), commissioned by Oxted and Limpsfield Residents Group (OLRG), also found that the width of Chalkpit Lane (and Barrow Green Road) is such that the *'facilities'* or refugia for pedestrians and other vulnerable road users are either *'non-existent or relatively poor'*. Mr Hurlstone pointed out, in response to one of my questions, that the swept path analysis upon which this conclusion is based utilised Ordnance Survey map data rather than road survey data which means it has an accuracy of  $\pm 1$  m. Consequently, I find this conclusion unreliable given the potential for up to an additional metre on either side of the carriageway to be present for manoeuvring or for other road users to seek refuge.
32. Although the Council, in its opening, highlights the fact that the level of bi-directional movement on Chalkpit Lane would be *'inconceivable'* if the quarry were the subject of a completely new planning application, this is not the case that is before me. There is an established, pre-existing use and the grounds for any limitation of that use must be fully justified and well founded on objective evidence. As the appellant pointed out in closing, conditions cannot be justified on the basis that they are simply seeking to impose modern standards of operation and are thus in some way *'unobjectionable'*.
33. Paragraph 108(c) of the Framework states that any significant impacts arising from a development on the transport network (in terms of capacity and congestion) or on highway safety should be mitigated to an acceptable degree. The PPG advises that conditions enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating any such adverse effects<sup>10</sup>. Paragraph 109 of the Framework goes on to state that development should only be prevented or refused on highway grounds if

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<sup>9</sup> Design Manual for Roads and Bridges (DMRB) TA 79/99 Traffic Capacity of Urban Roads

<sup>10</sup> Reference ID: 21a-001-20140306

- there would be an unacceptable impact on highway safety, or where the residual cumulative impacts on the road network would be severe.
34. Although related to the granting of planning permissions, this nevertheless provides a basis for judging whether the conditions that have been imposed are necessary from a highways perspective. As capacity, per se, is not at issue and it is not for me to undertake an evaluation of the cumulative road traffic impacts on the Godstone Ward, as might be expected in a local plan examination, the key consideration thus becomes one of highway safety.
35. The Officer's Report<sup>11</sup> concludes that '*there is no evidence to demonstrate that there is such a highway safety issue that can assist in formulating a maximum daily cap on HGV movements*'. I accept that fear and intimidation are genuinely felt by local road users and that the accident record does not reflect the frequency of near misses. Whilst the Institute of Environmental Management and Assessment guidelines<sup>12</sup> suggest thresholds that might be helpful in considering fear and intimidation, these are described as a 'first approximation' and no established methodology currently exists to enable a more objective assessment. Indeed, the OLRG TTN highlights the fact that the use of such an approximation is '*completely inappropriate*' in this instance.
36. However, fear that an accident is just waiting to happen does not provide sufficient or reasonable grounds for restricting HGV movements. This is because such feelings can make individuals more cautious which can lead to greater anticipation of potential hazards at specific locations on the local road network. Whilst there is a wholly understandable preference for a lower frequency of movement, this is not supported by the road safety record. Moreover, it became clear during the cross examination of Mr Stokes, that the St Mary's C of E Primary School Travel Plan shows an increase in the number of pupils walking from 37% to 39% between the two most recently monitored years. As this school is close to the outbound route, I find this significant. This is because it suggests that HGVs are not a material deterrent to one of the most vulnerable groups of local road users.
37. Turning to the issue of complaints and HGV movements, it was established in cross examination that Mr Stokes took these at face value and that not all complaints were necessarily related to quarry vehicles. He also accepted that a significant proportion of the highest peaks in movement, that were in excess of the 112 daily movement cap, were not correlated with recorded complaints shown in the relevant appendices. The appellant made the point in closing [ID15] that the justification for imposing the cap on this basis is '*fundamentally undermined*' as a result and I agree. Moreover, I am not satisfied that there is a causal relationship between the level of complaint and highway safety given the varied grounds upon which they were made.
38. Given the above, I am not persuaded that the pattern of movement documented in ID12 has led to an unacceptable impact on highway safety or severe, cumulative impacts on the capacity of the local road network. Whilst the width of the carriageways beyond the A25 are not ideal, significant road safety issues remain unproven at the current time. From a highways perspective, I find that there are insufficient grounds to justify condition 24 or

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<sup>11</sup> Planning and Regulatory Committee Report, 17 October 2018

<sup>12</sup> Guidelines for the Environmental Assessment of Road Traffic 1993

- the level of movement restriction in condition 25. This not only pertains to daily peak movements but also annual average movements.
39. Turning to condition 26, the Council feels that this is necessary as a result of the regular over-running of verges and general wear and tear on Chalkpit Lane which it has largely attributed to quarry traffic. The condition seeks to recover the costs of rolling condition surveys and any repairs that the Council deems necessary. During Mrs Murphy's cross examination it was established that if the appellant were to disagree with the scope of any repairs then the Council would serve a statutory breach of notice.
40. I not only find this to be wholly unreasonable but also unnecessary because such action would duplicate an existing regulatory mechanism under s59 of the Highways Act 1980 as well as the statutory duty of the Council to undertake road surveys. Mr Hurlstone, in response to one of my questions, indicated that preliminary discussion prior to any recovery of costs under s56 was common and a sufficient incentive to encourage the settlement of any financial contributions to repairs in his professional experience.
41. During the course of the Inquiry, the appellant also drew my attention to the fact that the Street History Reports from 2014 onwards show 6 monthly inspections by the Council, that other HGVs use Chalkpit Lane and that HGV damage to the road has been recorded when the quarry was closed. Consequently, the financial burden of road repair cannot reasonably be the exclusive responsibility of the appellant even if it were acceptable to require payments that should more properly be secured through a planning obligation.

#### *Noise considerations*

42. The Council did not rely on evidence from its expert witness, Mr Evans, in seeking to justify the lower daily movement cap of 112 of condition 25 as opposed to 156, as recommended in the Case Officer's Report<sup>11</sup>. The reasons given for this condition are also unrelated to noise and the Council's own planning witness, Mrs Murphy, expressly disavowed the lower value during cross examination. However, as this matter was raised by interested parties and could assist me in arriving at an objectively defined, daily movement cap, I will consider it in more detail.
43. In his proof of evidence, Mr Evans contends that the level of non-quarry HGV traffic is very low when compared to the national average and that any noise assessment should not account for existing HGV movements. In cross examination, Mr Evans confirmed that he had assumed a '*nil baseline*' and had assessed the impact of differing levels of HGV movement as if they originated from a new development. This assessment was based upon the guidance in two documents: *Calculation of Road Traffic Noise 1998* [CD06] and the DMRB *LA 111 Noise and Vibration* (LA111) [CD04]. In doing so, he assumed that movements that resulted in a change of 3 dB <sub>LA10, 18h</sub> or above would lead to a perceptible change and thus a significant, long-term noise impact.
44. In response to one of my questions, Mr Evans confirmed that he had not considered how different levels of movement might deviate from an empirically observed baseline at key receptors because this would lead to a phenomenon he defined as 'noise creep'. When pressed, he conceded that the approach was not supported by any specific policy or guidance. In fact, paragraph 3.45 LA111 points the other way and highlights the need to determine an

operational baseline from a 'do-minimum' noise level and to validate any baseline noise modelling results with empirical noise monitoring. The guidance goes on to recommend the use of corrections to take account of expected changes in traffic levels.

45. I find the assumption of a nil baseline consequently lacks credibility. This is not only because it fails to have regard to the existing quarry operation but also because it does not account for the ambient noise environment. This not only includes the movement of quarry HGVs on the local road network but also other prominent noise sources, such as the M25 and the local rail network. As noise monitoring was not linked to specific levels of movement associated with the quarry, the Council has not established a realistic acoustic baseline against which different, daily movement caps could be considered in order to determine if they would exceed ambient levels. Instead, the Council has chosen to rely upon road traffic monitoring data from 2014, when the quarry was closed, to compare modelled changes from a zero baseline.
46. Given the above, I find the noise evidence to be fatally flawed and of no practical assistance to me in differentiating between 112, 156, 200 or some other arbitrary cap on daily movement. From a noise perspective, I find that there are insufficient grounds to justify the level of movement restriction in condition 25.

#### *Other considerations*

47. The appellant has provided a UU which contains a planning obligation for the purposes of section 106 of the Town and Country Planning Act 1990 (as amended) and this is now an executed deed. The need for it is not contested and the Council indicated, in response to one my questions, that it would make the quarry more acceptable in planning terms.
48. Paragraph 56 of the Framework states that planning obligations should only be sought where they meet all of the following tests: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
49. The UU obliges both the freeholder (Oxted Greystone Company Ltd) and leaseholder (Southern Gravel Ltd) to comply with a number obligations relating to site rules, complaints procedures, record keeping, liaison meetings and the timing of outbound movements from the quarry. Operations shall cease whilst there is any material non-compliance with these obligations.
50. Bearing in mind the issues that have been raised by the local community, I find that it would help to mitigate the fear and intimidation felt by other road users because it provides a clear mechanism whereby any risk-taking or dangerous behaviour on the part of individual drivers can be regulated. It also formalises the inbound and outbound routes as well as the speed limit on Chalkpit Lane thus providing an enforcement mechanism.
51. Overall the obligations of the UU are related to requirements of development plan policies and are all necessary to make the development acceptable in planning terms. Furthermore, they are all directly related to the development, and are fairly and reasonably related in scale and kind. I therefore conclude

that the planning obligations comply with paragraph 56 the Framework and the relevant advice in the PPG.

## **Conclusion and Conditions**

### *Condition 24*

52. I have found that there is insufficient information to robustly establish the need for this condition for reasons I have already given. I therefore find that it fails the test of necessity. In cross-examination, Mrs Murphy conceded that there were no other quarries in the County that had such a condition and that it has only been applied to a gas facility that had a maximum of 4 movements per day. This would appear to be inconsistent and not entirely reasonable. Despite an absence of financial information, it is also clear that this condition could reduce the quarry income. As Mr Hurlstone noted in evidence, approximately 19% of the traffic leaving the quarry was at the beginning and end of the school day (08:00-09:00 and 15:00-16:00) in 2018 and that this proportion increased to approximately 21% in 2019. I therefore find that it also fails the test of reasonableness. Given the above, I conclude that the condition should be deleted.

### *Condition 25*

53. I have found that there is insufficient information to robustly establish the pattern of movement restriction preferred by the Council for reasons I have already given. However, there is still a need to prevent unlimited movement in order to ensure the safe and efficient operation of the local highway network. Bearing this in mind, I have modified this condition to reflect the level of movement preferred by the appellant. This is in accordance with Surrey Minerals Plan 2011 Core Strategy Policy MC15, Surrey Waste Plan 2008 Policy DC3, Tandridge District Local Plan 2001 Policies MO9 and MO13 and Tandridge District Core Strategy 2008 Policy CSP12. Given the above, I conclude that the condition should be amended.

### *Condition 26*

54. I have found that there is no justification for this condition for reasons I have already given. I therefore find that it fails the test of reasonableness and necessity. Given the above, I conclude that the condition should be deleted.

### *Overall conclusion*

55. Given the above and taking all other matters into consideration, I conclude that the appeal should be allowed. I therefore vary the planning permission by deleting two of the disputed conditions and modifying a third.

*Roger Catchpole*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT

Mr A Booth QC instructed by Clare Fallows of Charles Russell Speechlys LLP who called:

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### FOR THE COUNCIL

Mr R Langham of Counsel instructed by the Director of Law of Surrey County Council who called:

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Mr A Stokes HNC MCIHT, Surrey County Council

Ms S Murphy BSc (hons) MSc RTPI IEMA, Surrey County Council

### INTERESTED PERSONS

Cllr C Sayer            Tandridge District Council, Oxted North and Tandridge

Cllr J Wren            Tandridge District Council, Oxted North and Tandridge

Cllr B Rush            Surrey County Council, Warlingham

Cllr C Farr            Tandridge District Council, Godstone

Ms G Miscovich      Woldingham Residents

Mr P Wade          Local Resident

Mr T Simpson        Local Resident

## **DOCUMENTS SUBMITTED TO THE INQUIRY**

ID1    Noise Evidence Table Rebuttal by Neil Jarman

ID2    Opening Submissions by Alexander Booth

ID3    Opening Submissions by Richard Langham

ID4    Highway Authority Response, 2 October 2018

ID5    Errata for Proof of Evidence by Phil Evans

ID6    Clarification of Paragraph 4.2.9 of Proof of Evidence by Phil Evans

- ID7 Opening Statement by Jackie Wren
- ID8 Opening Statement by Chris Farr
- ID9 Opening Statement by Catherine Sayer
- ID10 Opening Statement by Becky Rush
- ID11 Opening Statement by Gina Miscovich
- ID12 Agreed Summary Statistics of Vehicle Movements by Main Parties
- ID13 Revised Unilateral Undertaking by Southern Gravel Ltd and Oxted Greystone Company Ltd
- ID14 Closing Submissions by Richard Langham
- ID15 Closing Submissions by Alexander Booth
- ID16 Completed Unilateral Undertaking by Southern Gravel Ltd and Oxted Greystone Company Ltd
- ID17 Closing Statement by Catherine Sayer (after closing)
- ID18 Closing Statement by Gina Miscovich (after closing)