



Neutral Citation Number: [2017] EWHC 442 (Admin)

Case No CO/5517/2016

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**PLANNING COURT IN LEEDS**

Leeds Combined Court,  
1 Oxford Row, Leeds LS1 3BG

Date: 07/03/17

**Before :**

**MR JUSTICE HICKINBOTTOM**

**Between :**

**THE QUEEN ON THE APPLICATION OF**  
**(1) SAMUEL SMITH OLD BREWERY**  
**(TADCASTER) (AN UNLIMITED COMPANY)**  
**(2) OXTON FARM (AN UNLIMITED COMPANY)**

**Claimants**

**- and -**

**NORTH YORKSHIRE COUNTY COUNCIL**

**Defendant**

**- and -**

**DARRINGTON QUARRIES LIMITED**

**Interested**  
**Party**

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**Peter Village QC and Ned Helme (instructed by Pinsent Masons LLP) for the Claimants**  
**Nathalie Lieven QC and Hannah Gibbs (instructed by Legal and Democratic Services,**  
**North Yorkshire County Council) for the Defendant**  
**Jonathan Easton (instructed by Walker Morris LLP) for the Interested Party**

Hearing date: 17 February 2017

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**Approved Judgment**



**Mr Justice Hickinbottom :**

**Introduction**

1. The First Claimant is a long-established brewery, with its head office in Tadcaster, North Yorkshire; and the Second Claimant is a member of the same group of companies.
2. Both companies own farmland in the vicinity of Jackdaw Crag Quarry, a magnesian limestone quarry extending over 25 hectares, lying to the west of the village of Stutton, about 1.5km to the south west of Tadcaster, in an area of Green Belt as designated by the Selby District Core Strategy Local Plan (“the Local Plan”). It is owned and operated by the Interested Party (“Darrington”). Planning permission for the extraction of limestone from the quarry was first granted in July 1948, and has been renewed from time-to-time, permission eventually being granted to work the quarry until February 2016, which was expected to see its complete depletion. Various restoration obligations were attached.
3. In October 2009, Darrington applied to the Defendant mineral planning authority (“the Council”) for planning permission to extend the operational face of the quarry southwards, to incorporate a 6 hectare area of adjacent Grade 2 agricultural land (“the Application Site”). The proposed extension was about 24% of the existing quarry area. It was proposed that, over a period of seven years, approximately 2m tonnes of limestone be extracted from the existing quarry face in a series of 25m wide and 5m deep strips. Under the proposal, the topsoil would be stripped from the extended area, and used to create screening mounds on the southern and eastern boundaries of the Application Site. The rock would be processed using existing plant on the current quarry site, and exported in the same way as for the current quarry under the existing section 106 agreement using the existing haul road.
4. The Claimants have a particular interest in the Application Site because it has a major aquifer running beneath it, and it is within a Category 1 Source Protection Zone for groundwater as designated by the Environment Agency. The First Claimant draws water from that aquifer for use in its brewing business. Furthermore, as I have indicated, the Claimants own farmland in the vicinity of the Application Site. Notably, they own Warren House Farm and Cottages, a number of farm dwellings immediately to the south of the Application Site.
5. Despite the Claimants objecting to the proposed development on various grounds, on 7 January 2013, planning permission was granted. However, following a challenge by the Claimants in this court, that permission was quashed on the basis that the Council accepted that it had acted unlawfully in failing to take into account environmental information as required by regulation 3(2) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (SI 1999 No 293).
6. Following submission of an updated environmental statement, the application was reconsidered by the Council’s Planning and Regulatory Functions Committee (“the Committee”) on 9 February 2016. In the usual way, the Committee had the benefit of an officers’ report (“the Officers’ Report”). That report concluded that the proposed development was not inappropriate development in the Green Belt; and it

recommended that permission be granted. Subject to the completion of a section 106 agreement, the Committee resolved to grant conditional planning permission. Having secured such an agreement, planning permission was duly granted on 22 September 2016.

7. In this claim, the Claimants seek to challenge that grant, on a single ground, namely that the Officers' Report – and, in their turn, the Committee and the Council – misunderstood, and thus misapplied, the relevant national policy, namely paragraph 90 of the National Planning Policy Framework (“the NPPF”); and consequently erred in concluding that the development was not inappropriate development in the Green Belt. If it had correctly interpreted the policy, it is said that the Council could only have concluded that it was inappropriate development, for which there were no “very special circumstances”, a prerequisite for approval of inappropriate development in Green Belt land.
8. On 5 December 2016, Gilbert J adjourned the application for permission to proceed to be listed in court as a rolled-up hearing. At that hearing before me, Peter Village QC and Ned Helme appeared for the Claimants; Miss Nathalie Lieven QC and Hannah Gibbs for the Council; and Jonathan Easton for Darrington. At the outset, I thank them all for their contribution to the debate.

### **The Legal Principles**

9. The legal principles relevant to this claim are well-established and uncontroversial. They are as follows.
  - i) Section 70(2) of the Town and Country Planning Act 1990 (“the 1990 Act”) requires that planning authorities, in dealing with an application for planning permission, must have regard to all “material considerations”, which include relevant statements of policy. Since March 2012, statements of central government policy have been set out mainly in the NPPF.
  - ii) Planning policies are not statutory or contractual provisions, and should not be construed as if they were. The correct interpretation of planning policy, including the NPPF, is a matter of law for the court to determine objectively in accordance with the language used, read purposively in its proper context. When construing particular provisions of the NPPF, the context is the NPPF looked at as a whole. Because relevant planning policy is a material consideration, and policy cannot be properly applied if it is misconstrued, where a planning decision-maker fails properly to understand relevant policy, that is an error of law in respect of which the court may intervene, if it is material (see Tesco Stores Limited v Dundee City Council [2012] UKSC 13 at [17]-[21] per Lord Reed JSC, R (Timmins) v Gedling Borough Council [2015] EWCA Civ 10 at [24] per Richards LJ, and Suffolk Coastal District Council v Secretary of State for Communities and Local Government [2016] EWCA Civ 168 especially at [26]-[27] per Lindblom LJ).
  - iii) Whereas what amounts to a material consideration is a matter of law, the weight to be given to such considerations is a question of planning judgment and is a matter entirely for those to whom the task of planning decision-making has been assigned. An application for judicial review does not provide

an open opportunity for a disappointed party to contest the planning merits of a decision. The court will intervene, and will only intervene, on conventional public law grounds, which focus on process (see Newsmith v Secretary of State for the Environment, Transport and the Regions [2001] EWHC 74 (Admin) at [6] per Sullivan J, and Tesco Stores Limited v Secretary of State for the Environment [1995] 1 WLR 759 at page 780F-H per Lord Hoffmann).

- iv) In relation to process, a local planning authority usually delegates its planning functions to a committee of councillors, who act on the basis of information provided by case officers in the form of a report. Such a report usually also includes a recommendation as to how the application should be dealt with. In the absence of contrary evidence, it is a reasonable inference that, where a recommendation is adopted, members of the planning committee follow the reasoning of the report. The officers' report is therefore often a crucial document. It must not mislead the decision-makers; and it must be sufficiently clear and full to enable councillors to understand the important issues and the material considerations that bear upon them, and decide those issues within the limits of planning judgment that the law allows them (see Oxton Farms and Samuel Smith Old Brewery (Tadcaster) v Selby District Council (18 April 1997) 1997 WL 1106106 per Judge LJ, and R (Lowther) v Durham County Council [2001] EWCA Civ 781 at [97]-[98] per Pill LJ). If an officers' report, as supplemented by any further oral report at the planning committee meeting, is insufficient to enable the planning committee to perform its function, or if it is materially misleading, the decision taken by the committee on the basis of the report may be challengeable.
- v) Whilst the officer's report must be sufficient for those purposes, when challenged, such reports are not to be subjected to the same exegesis that might be appropriate for the interpretation of a statute: what is required is a fair reading of the report as a whole, taking into account the fact that it is written for a committee of local councillors who can be taken to be experienced in planning matters and to have considerable local knowledge (R (Siraj) v Kirklees Metropolitan Borough Council [2010] EWCA Civ 1286 at [19] per Sullivan LJ). Furthermore, the courts have stressed the need for reports to be concise and focused, and the dangers of reports being too long, elaborate or defensive (see R (Morge) v Hampshire County Council [2011] UKSC 2 at [36], per Baroness Hale JSC; and R (Maxwell) v Wiltshire Council [2011] EWHC 1840 (Admin) at [43], per Sales J as he then was).

### **Relevant Policy**

10. The relevant national policy applicable to Green Belt land is found in Section 9 of the NPPF, under the heading "Protecting Green Belt Land".
11. Paragraphs 79-81 set out some broad statements of principle:
- “79. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

80. Green Belt serves five purposes:

- to check the unrestricted sprawl of large built-up areas;
- to prevent neighbouring towns merging into one another;
- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns; and
- to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

81. Once Green Belts have been defined, local planning authorities should plan positively to enhance the beneficial use of the Green Belt, such as looking for opportunities to provide access; to provide opportunities for outdoor sport and recreation; to retain and enhance landscapes, visual amenity and biodiversity; or to improve damaged and derelict land.”

Thus, by serving the purposes specified in paragraph 80, the NPPF Green Belt policy seeks to “prevent urban sprawl by keeping land permanently open”, the essential characteristics of Green Belt land being “openness” and permanence.

12. The provisions relating to inappropriate development in Green Belt areas are at paragraphs 87-90 which, so far as relevant to this claim, provide:

“87. As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

88. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

89. A local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Exceptions to this are:

- buildings for agriculture and forestry;
- provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it;

- the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
- the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
- limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan; or
- limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.

90. Certain other forms of development are also not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. These are:

- mineral extraction;
- engineering operations;
- local transport infrastructure which can demonstrate a requirement for a Green Belt location;
- the re-use of buildings provided that the buildings are of permanent and substantial construction; and
- development brought forward under a Community Right to Build Order.”

13. The lists in paragraphs 89 and 90 are “closed”, in the sense that, unless development falls within one of the bullet points in either list, it is inappropriate development which can only be allowed if there are “very special circumstances” (see Timmins at [27] per Richards LJ, and R (Lee Valley Regional Park Authority) v Epping Forest District Council [2016] EWCA Civ 404 at [18] per Lindblom LJ).
14. It seems to me that the general policy approach to development in an area of Green Belt is clearly set out in paragraphs 89 and 90. That approach is different, dependent upon whether the proposed development is in principle inappropriate or in principle not inappropriate (i.e. in principle appropriate). The former includes both the construction of new buildings other than those that fall within the exceptions in paragraph 89; and, because the paragraph 89 and 90 lists are closed, also any development not listed in the bullet points in either of those paragraphs. The latter includes both new buildings which fall within any of the paragraph 89 exceptions; and

development which falls within any of the paragraph 90 listed categories, even if, in either case, to fall within the category, the development has to satisfy additional criteria such as the preservation of the openness of the Green Belt and that the development does not conflict with the purposes of including land in the Green Belt. It is noteworthy that those two particular criteria feature both generically in paragraph 90, but also specifically in the second bullet point exception in paragraph 89 (“provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, *as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it*”). In my view, this illustrates the similarity of approach to the bullet point exceptions in paragraph 89, and the development considered not inappropriate as listed under paragraph 90.

15. That difference in approach is, in my view, clear from the wording of the NPPF itself; but it was also identified and emphasised in the leading case on paragraph 90, Europa Oil and Gas Limited v Secretary of State for Communities and Local Government [2014] EWCA Civ 825, in which, on the issue of approach, the Court of Appeal effectively adopted the substantive reasoning of Ouseley J at first instance ([2013] EWHC 2643 (Admin)).
16. The case concerned a planning application for the establishment of a drillsite and the carrying out of exploratory drilling for hydrocarbons on Green Belt land. The local planning authority refused the application. On appeal, an inspector dismissed the applicant’s appeal on the basis that exploratory drilling did not constitute “mineral extraction” for the purposes of paragraph 90 of the NPPF – and so the development was necessarily inappropriate.
17. Ouseley J allowed the applicant’s section 288 application, holding that the development fell within “mineral extraction”; and, if the inspector had not erred in finding the contrary, he may have concluded that planning permission should be granted. Giving reasons for holding that the inspector’s decision would not necessarily have been the same even if he had not erred, Ouseley J said this (at [64]):

“... [T]he premise of paragraph 17 [of the inspector’s decision], incorrectly, is that mineral extraction including hydrocarbon exploration cannot be appropriate in the Green Belt. However, any correct analysis of the proviso to [paragraph 90 of the NPPF], which is not what paragraph 17 purports to provide at all, has to start from the different premise that such exploration or extraction can be appropriate. The premise therefore for a proper analysis is that there is nothing inherent in the works necessary, generally or commonly found for extraction, which would inevitably take it outside the scope of appropriate development in the Green Belt.”
18. The Court of Appeal agreed. Richards LJ, giving the only substantive judgment, said (at [41]):

“... I agree with the general thrust of the judge’s reasoning, without needing to consider every detail of it. The key point, in my judgment, is that the inspector approached the effect on Green Belt openness and purposes on the premise that

exploration for hydrocarbons was necessarily inappropriate development since it did not come within any of the exceptions. He was not considering the application of the proviso to paragraph 90 at all: on his analysis, he did not get that far. Had he been assessing the effect on Green Belt openness and purposes from the point of view of the proviso, it would have been on the very different premise that exploration for hydrocarbons on a sufficient scale to require planning permission is nevertheless capable in principle of being appropriate development. His mind-set would have been different, or at least it might well have been different...”.

19. More recently, the same approach was adopted by Lindblom LJ in Lee Valley. At [18], he said:

“A fundamental principle in national policy for the Green Belt, ... is that the construction of new buildings in the Green Belt is ‘inappropriate’ development and should not be approved except in ‘very special circumstances’, unless the proposal is within one of the specified categories of exception in the ‘closed lists’ in paragraphs 89 and 90. There is ‘no general test that development is appropriate provided it preserves the openness of the Green Belt and does not conflict with the purposes of including land within the Green Belt’ (see the judgment of Richards LJ in Timmins, at paragraphs 30 and 31). The distinction between development that is ‘inappropriate’ in the Green Belt and development that is not ‘inappropriate’ (i.e. appropriate) governs the approach a decision-maker must take in determining an application for planning permission. ‘Inappropriate development’ in the Green Belt is development ‘by definition, harmful’ to the Green Belt – harmful because it is there – whereas development in the excepted categories in paragraphs 89 and 90 of the NPPF is not. The difference in approach may be seen in the policy in paragraph 87. It is also apparent in the second sentence of paragraph 88, which amplifies the concept of ‘very special circumstances’ by explaining that these will not exist ‘unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations’.”

20. It is noteworthy that neither Ouseley J in Europa Oil nor Lindblom LJ in Lee Valley, whilst drawing a clear distinction between those categories of development which are in principle inappropriate and those that are not inappropriate, drew any distinction between the categories of exception in paragraph 89 and the listed categories in paragraph 90.
21. Policy SP13 of the Local Plan effectively incorporates the relevant provisions of the NPPF into the Development Plan covering the Application Site. It is common ground that the local policy does not add anything of substance to the policies found in the NPPF.

## **The Challenged Decision**

22. Before the Committee, Darrington did not seek to argue that, if the development was inappropriate, there were here “very special circumstances” in that, for the purposes of paragraphs 87 and 88 of the NPPF, the potential harm to the Green Belt as a result of the development was clearly outweighed by other considerations. Rather, it was submitted that this was development by way of mineral extraction falling under paragraph 90, and it was not inappropriate because it satisfied the paragraph 90 proviso, namely it preserved the openness of the Green Belt and did not conflict with the purposes of including land in the Green Belt.
23. Reflecting the many issues involved in the application, the Officers’ Report was a substantial document of over a hundred pages, which set out the background, the proposal, and the history of the four rounds of consultation, advertisements and representations. In section 6, it set out or summarised the relevant planning policy and guidance, including parts of section 9 of the NPPF (although not expressly paragraph 90) and Policy SP13 of the Local Plan.
24. Section 7 of the Officers’ Report dealt with “Planning Considerations”, of which there were thirteen, including siting and scale, landscape impact, residential amenity (including noise, vibration and dust), and impact on the Green Belt. The Claimants do not complain about the manner in which the report dealt with any of these matters, except impact on the Green Belt, which was dealt with in paragraphs 7.117-7.126.
25. With regard to landscape (and, notably, visual impact), the Officers’ Report noted the consultation response from the County Planning Authority’s Principal Landscape Architect, to the effect that, in her view, “the quarry extension would still result... in an exposed face close to the skyline which is likely to be as visible as it is at present if not more, and which would be closer to Warren House Farm and Cottages where there would be less benefit from restoration of the existing quarry.... [P]roposed bunding and planting could help residents during the operational period but in the long term could cut off the long distance views that are currently obtained.” The same response concluded:

“Mitigation and ‘restoration’ measures would soften the landscape and visual impacts, and the nature conservation value of the new landscape would be much greater, but the landscape character and quality would be permanently changed, so the impact cannot be said to be described as neutral.”
26. However, the Officers’ Report concluded (at paragraph 7.47) that, with the proposed mitigation, the potential adverse landscape and visual impact of the development would be acceptable in the sense that it was outweighed by other factors such as the social and economic benefits of continued mineral extraction on site: a point expressly minuted as having been made by the Head of Planning Service at the 9 February 2016 Committee meeting.
27. In respect of impact on the Green Belt, paragraph 7.116 of the Officers’ Report accurately paraphrased the substance of paragraph 90 of the NPPF, namely that:

“... [T]he NPPF reaffirms previous Green Belt policy and states that mineral extraction is not considered to be an inappropriate activity within the Green Belt, provided that developments preserve the openness of the Green Belt and do not conflict with the purposes of including the land in the Green Belt.”

28. From paragraph 7.121, the report applied that policy, as follows:

“7.121 When considering applications within the Green Belt, in accordance with the NPPF, it is necessary to consider whether the proposed development will firstly preserve the openness of the Green Belt and secondly ensure that it does not conflict with the purposes of including land within the Green Belt.

7.122 It is considered that the proposed development preserves the openness of the Green Belt and does not conflict with the purposes of including land within the Green Belt. Openness is not defined, but it is commonly taken to be the absence of built development. Although the proposed development would be on existing agricultural land, it is considered that because the application site immediately abuts the existing operational quarry, it would not introduce development into this area of a scale considered to conflict with the aims of the preserving the openness of the Green Belt.

7.123 In terms of whether the proposed development does not conflict with the purposes of including land within the Green Belt, the proposed quarrying operations are not considered to conflict with the purposes of including land within the Green Belt. Equally, it is not considered that the proposed development would undermine the objective of safeguarding the countryside from encroachment as it should be considered that this site is in conjunction with an operational quarry which will be restored. The proposed development is a temporary use of land and would also be restored upon completion of the mining operations through an agreed [Detailed Restoration and Management Plan].

7.124 The purposes of including land within the Green belt to prevent the merging of neighbourhood towns and impacts upon historic towns are not relevant to this site as it is considered the site is adequately detached from the settlements of Stutton, Towton and Tadcaster....

7.125 As mentioned in the response from [the First Claimant], one of the purposes of the Green Belt is assisting in urban regeneration which the objector claims will be undermined by the proposed development. Given the situation of the [A]pplication [S]ite, adjacent to an existing operational

quarry and its rural nature, and the fact that minerals can only be worked where they are found, it is considered that the site would not, therefore, undermine this aim of the Green Belt.

7.126 The restoration scheme is to be designed and submitted as part of a Section 106 Agreement, it is considered that there are appropriate controls to ensure adequate restoration of the site. *Due to the proposed restoration of the temporary quarry and the fact that it is considered the proposal doesn't conflict with the aims of the Green Belt, it is considered that the proposed development would not materially harm the character and openness of the Green Belt, and would, therefore, comply with Policy... SP13 of the... Local Plan and NPPF.*" (emphasis added).

The italicised part of paragraph 7.126 is repeated in the conclusion section of the Officer's Report, at paragraph 8.5.

29. The Committee accepted the Officers' Report in respect of this issue. Paragraph 159 of the minutes of the 9 February 2016 meeting simply records, under the heading "Impact upon the Green Belt":

“• It is considered [by the representative of the Head of Planning Services] that the proposed development (including the final restoration scheme) preserves the openness of the Green Belt and does not conflict with the purposes of including the land within the Green Belt; and

• The representative of the Head of Planning Services stated that mineral extraction is not classified as inappropriate development within the Green belt and taking into account that the quarry preserves the openness of the Green Belt and does not conflict with the purposes of including the land within the Green Belt, the proposed extension is considered appropriate development in this instance.”

30. Following discussion, the Committee resolved as follows:

“That subject to the signing of a section 106 agreement controlling the long term restoration, aftercare and management of the site and appropriate lorry [rerouting], planning permission be granted for the reasons stated in the [Officers' Report] and subject to the conditions [attached].”

31. A section 106 agreement having been secured, on 22 September 2016, under delegated powers, the appropriate Council Director granted planning permission for the proposed development.

### **The Grounds of Challenge**

32. It is common ground that, the proposed development being for mineral extraction, paragraph 90 of the NPPF applied. That provides that mineral extraction on Green Belt land is not inappropriate provided that it preserves the “openness” of the Green Belt and does not conflict with the purposes of including land in Green Belt.
33. Mr Village for the Claimants submitted that the Officers’ Report – notably, paragraph 7.122 – erred in its interpretation of the openness part of the proviso in paragraph 90, in four ways, namely:

Ground 1: In evaluating the impact of the proposed development on openness, the Officers’ Report erred in failing to consider the visual and aural/noise impact of the development.

Ground 2: The findings on openness in the Officers’ Report are materially inconsistent.

Ground 3: In proceeding on the basis that “openness” is “the absence of built development”, the Officer’s Report materially misled the Committee, because “openness” is not restricted to freedom from built development. It is freedom from *all* development, which includes mining operations.

Ground 4: Paragraph 7.122 of the Officers’ Report was also materially misleading because it indicated that, simply because the proposed development abutted an existing operational quarry, it would not be in conflict with the aim of preserving openness of the Green Belt.

34. These errors in the Officers’ Report, it is said, were not corrected at the Committee meeting of the 9 February 2016; indeed, to use Mr Village’s phrase, “the same muddled thinking” that infected paragraph 7.122 of the Officers’ Report was plainly in evidence at the meeting, where the errors were compounded, the assertion that mineral extraction is not “classified” as inappropriate development being “straightforwardly wrong and misleading”. The errors thus fatally infect the decision to grant planning permission.
35. I will deal with the four grounds in turn.

### **Ground 1**

36. This is the Claimants’ primary ground. Its focus is upon the following sentence in paragraph 7.122 of the Officers’ Report:

“Although the proposed development would be on existing agricultural land, it is considered that because the application site immediately abuts the existing operational quarry, it would not introduce development into this area *of a scale* considered to conflict with the aims of the preserving the openness of the Green Belt.” (emphasis added).

37. Mr Village submits that, in evaluating the impact of the proposed development on openness, the Officers’ Report thus only considered the scale of the development, i.e. its spatial impact. He accepts that that spatial impact is material to the consideration

of openness; but it is not the only relevant matter. In assessing openness, matters such as visual and noise impacts of the development are relevant, and the Officers' Report was obliged to take them into account. By restricting its consideration to scale or spatial impact, the Officer's Report wrongly excluded these other material factors; and was thus materially deficient.

38. In support of this submission, Mr Village relied heavily upon the recent consideration of the concept of openness by Sales LJ (with whom Arden and Floyd LJ agreed) in Turner v Secretary of State for Communities and Local Government [2016] EWCA Civ 466.
39. Turner concerned an application for planning permission to replace a mobile home and storage yard used for commercial vehicles with a three-bedroom bungalow, in which the applicant compared the current and proposed use to suggest that the volume of the proposed bungalow would be less than the volume of the mobile home and the many lorries that it was to replace. Given the lesser volume, it was contended that the proposed redevelopment would not have a greater impact on the openness of the Green Belt than the existing lawful use, with the result that it should not be regarded as inappropriate development because it fell within the exception found in the sixth bullet point of paragraph 89 of the NPPF (quoted at paragraph 12 above). The planning authority refused the application, as did the inspector on appeal.
40. On the subsequent application under section 288 of the 1990 Act (reported as [2015] EWHC 2728 (Admin)), Lang J considered that, although size was material, the test to be met in the sixth bullet point of paragraph 89 was not formulated merely in terms of an assessment of the relative size of the existing and proposed development; but was rather focused on the impact of the proposed development on openness and the other purposes of a Green Belt identified in paragraph 80 of the NPPF. Lang J, noting that, in comparing a mobile home and trucks with a bungalow, the applicant was not in any event comparing like with like, found that the inspector was entitled not to adopt the applicant's purely volumetric approach but rather was entitled to take into account visual impact.
41. Sales LJ agreed. At [17], he disapproved two propositions set out by Green J in Timmins v Gedling Borough Council [2014] EWHC 654 (Admin) at [78], which were not considered by the Court of Appeal in Timmins itself (to which reference has already been made: see paragraphs 9(ii) and 13 above), upon which the applicant had relied, namely that "there is a clear conceptual distinction between openness and visual impact" and "it is therefore wrong *in principle* to arrive at a specific conclusion as to openness by reference to visual impact" (emphasis in the original). Sales LJ explained:

"13. The principal matter in issue is whether the Inspector adopted an improper approach to the question of openness of the Green Belt....

14. The concept of 'openness of the Green Belt' is not narrowly limited to the volumetric approach suggested by [Counsel for the appellant]. The word 'openness' is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built

up it would be if redevelopment occurs (in the context of which, volumetric matters may be a material concern, but are by no means the only one) and factors relevant to the visual impact on the aspect of openness which the Green Belt presents.

15. The question of visual impact is implicitly part of the concept of ‘openness of the Green Belt’ as a matter of the natural meaning of the language used in paragraph 89 of the NPPF. I consider that this interpretation is also reinforced by the general guidance in paragraphs 79-81 of the NPPF, which introduce section 9 on the Protection of Green Belt Land. There is an important visual dimension to checking ‘the unrestricted sprawl of large built-up areas’ and the merging of neighbouring towns, as indeed the name ‘Green Belt’ itself implies. Greenness is a visual quality: part of the idea of the Green Belt is that the eye and the spirit should be relieved from the prospect of unrelenting urban sprawl. Openness of aspect is a characteristic quality of the countryside, and ‘safeguarding the countryside from encroachment’ includes preservation of that quality of openness. The preservation of ‘the setting... of historic towns’ obviously refers in a material way to their visual setting, for instance when seen from a distance across open fields. Again, the reference in paragraph 81 to planning positively ‘to retain and enhance landscapes, visual amenity and biodiversity’ in the Green Belt makes it clear that the visual dimension of the Green Belt is an important part of the point of designating land as Green Belt.

16. The visual dimension of the openness of the Green Belt does not exhaust all relevant planning factors relating to visual impact when a proposal for development in the Green Belt comes up for consideration. For example, there may be harm to visual amenity for neighbouring properties arising from the proposed development which needs to be taken into account as well. But it does not follow from the fact that there may be other harms with a visual dimension apart from harm to the openness of the Green Belt that the concept of openness of the Green Belt has no visual dimension itself.”

42. In this case, Mr Village relied upon the failure of the Officers’ Report to take into account both visual and aural/noise adverse impacts; but, as he accepted that his submission in respect of the latter could not succeed if his submission in relation to the former did not, I will focus initially on visual impact alone.
43. Mr Village accepts that, in the Officers’ Report, the adverse visual impact was properly considered as a discrete planning matter, and was found to be acceptable as being outweighed by the planning benefits of the proposed development such as the social and economic benefits, as was the case (see paragraphs 25-26 above). However, he submitted, as openness inherently and necessarily involves consideration of visual impact, as well as scale and spatial impact, the Officers’ Report was bound to consider the visual impact of the proposed development on openness. It simply failed to do so. Had it done so, then, some adverse visual impact having been acknowledged earlier in the report when visual impact was dealt with as a discrete planning consideration (again, see paragraphs 25-26 above)), the report could not

have concluded that the development “preserved” the openness of the Green Belt. “Preservation” here requires at least maintenance of the current position; and *any* adverse visual impact would be sufficient to mean that such maintenance could not be shown and consequently the paragraph 90 proviso in relation to openness could not apply.

44. Although Turner was a case concerning paragraph 89 of the NPPF, the concept of openness must be the same throughout section 9 of the NPPF, notably in both paragraph 89 and paragraph 90. Mr Village submitted that it was equally clear that the approach adopted to paragraph 89 and paragraph 90 should be the same. Both start from the general proposition that development in the Green Belt is inappropriate, and provide for exceptions to that rule. It seems to me that it is particularly clear that the approach should be the same because one of the exceptions in paragraph 89 (i.e. that for the provision of sports facilities etc) has the same proviso as paragraph 90, namely “as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land in the Green Belt”.
45. Consequently, Turner applies with full force; and the failure of the Officers’ Report – and, in their turn, the Committee and Council, who relied upon that report – to consider the visual impact of the proposed development on openness of the Green Belt was a material error, such that the decision to grant planning permission should be quashed.
46. However, forcefully as those submissions were made, I find them unpersuasive, for the following reasons.
47. Mr Village considered that a crucial contention in his submissions was that the approach to paragraphs 89 and 90 must be the same, a proposition with which Ms Lieven and Mr Easton did not agree.
48. For the reasons I have set out (in paragraph 14 and following above), I do not accept Mr Village’s submission that both paragraph 89 and paragraph 90 start from the same general proposition that development in the Green Belt is inappropriate. In my view – and, on my understanding of their submissions, this is not exactly as either Ms Lieven or Mr Easton put it – the relevant policy distinction is not between paragraphs 89 and 90 as such, but rather between, on the one hand, proposed development that is in principle inappropriate, and, on the other hand, proposed development that is in principle not inappropriate. This was the distinction crisply drawn by Lindblom LJ in Lee Valley (see paragraphs 19-20 above). As I have described (in paragraph 14 above), the former includes both the construction of new buildings other than those that fall within the exceptions in paragraph 89; and, because the paragraph 89 and 90 lists are closed, also any development not listed in the bullet points in either of those paragraphs. The latter includes both new buildings which fall within any of the paragraph 89 exceptions; and development which falls within any of the paragraph 90 listed categories, even if, in either case, to fall within the category, the development has to satisfy additional criteria.
49. I am unpersuaded by the submissions of, particularly, Mr Easton insofar as he attempted to draw a distinction in approach between the listed exceptions in paragraph 89 and the listed categories in paragraph 90. As I have already noted (paragraph 20 above), neither Ouseley J in Europa Oil nor Lindblom LJ in Lee Valley drew any such

distinction; and, as Ouseley J illustrated in Europa Oil, again at [66], an applicant will have to go through the same hoops to satisfy the proviso in the second bullet point exception in paragraph 89 (the sports facilities etc exception) as he would to satisfy the same proviso that applies generically in paragraph 90.

50. However, I do not consider that issue to be determinative of this ground which, in my view, is fatally flawed for a different reason.
51. Mr Village submitted that, as a result of the principles set out in Turner, in considering openness, a planning decision-maker is obliged to take into account visual impact of the proposed development. However, that is not what Turner held. The case concerned whether the inspector had erred in taking into account visual impact of the development. Both Lang J and the Court of Appeal held, not that he was *obliged* to take visual impact into account, but only that, in the circumstances of the particular case, he was *entitled* to do so. The judgment of Sales LJ is particularly clear in this regard. It is true that he observed that, “The question of visual impact is implicitly part of the concept of ‘openness of the Green Belt’” and that “Greenness is a visual quality: part of the idea of the Green Belt is that the eye and the spirit should be relieved from the prospect of unrelenting urban sprawl” (see [15]); but nowhere does Sales LJ suggest that a decision-maker is required to take into account visual impact in every Green Belt case in which openness is an issue. Rather, he said:

“The word ‘openness’ is open-textured and a number of factors are *capable* of being relevant when it comes to applying it to the particular facts of a specific case” (emphasis added).

On the facts of the specific case before him, he concluded (at [27]), that

“The Inspector was... *entitled* to take into account the difference in the visual intrusion on the openness of the Green belt as he did...” (again, emphasis added).

52. Therefore, the ratio of the judgment is that, depending on the specific circumstances of a case, visual impact may be taken into account by a planning decision-maker when considering the impact of a proposed development on the openness of a Green Belt area. It denied the proposition that, as a matter of law, visual impact cannot be relevant to openness, whatever the facts of the particular case might be. This flexibility is important; because, although the focus of any consideration of openness of Green Belt land is likely to be on spatial impact – and, in many cases, separate consideration of visual impact will add little if anything – there will be cases, of which Turner was one, where consideration of visual impact in the context of openness will be relevant if not essential. Given the circumstances of that case – in which a mobile home and temporary commercial vehicles of variable heights would be replaced by a permanent bungalow which would be a “dominating feature”, with a “dominating” symmetrical front façade and a high pitch roof – it is, in my respectful view, unsurprising that Lang J and the Court of Appeal considered that the inspector did not err by taking into account visual impact, as well as spatial impact.
53. Sales LJ’s approach seems to me entirely consistent with that of Ouseley J and the Court of Appeal in Europa Oil, in respect of other factors which may also be relevant to the assessment of openness in this context. Ouseley J said this:

“66. ... [A]s Green Belt policies [in paragraphs 89 and 90 of the NPPF] demonstrate, considerations of appropriateness, preservation of openness and conflict with Green Belt purposes are not exclusively dependent on the size of building or structures but include their purpose. The same building, as I have said, or two materially similar buildings; one a house and one a sports pavilion, are treated differently in terms of actual or potential appropriateness. The Green Belt may not be harmed necessarily by one but is harmed necessarily by another. The one it is harmed by because of its effect on openness, and the other it is not harmed by because of its effect on openness. These concepts are to be applied, in the light of the nature of a particular type of development.

67. One factor which affects appropriateness, the preservation of openness and conflict with Green Belt purposes, is the duration of development and the reversibility of its effects. Those are of particular importance to the thinking which makes mineral extraction potentially appropriate in the Green Belt. Another is the fact that extraction, including exploration, can only take place where those operations achieve what is required in relation to the minerals. Minerals can only be extracted where they are found....

68. Green Belt is not harmed by such a development because the fact that the use has to take place there, and its duration and reversibility are relevant to its appropriateness and to the effect on the Green Belt. Whether development, capable of being appropriate for the purposes of the proviso to [paragraph 90 of the NPPF], is in fact inappropriate, is a more complex question than the consideration of the effect on the Green Belt, where development has already been concluded to be inappropriate....”

Ouseley J thus indicated that, in addition to spatial impact (and, I add, visual impact), the purpose of the proposed development, its degree of permanence and proposed duration, and the reversibility of its effects are all matters which may, depending on the circumstances of the particular case, be relevant in assessing preservation of openness.

54. In my respectful view, this passage from Ouseley J’s judgment in Europa Oil is crucial to a proper understanding of the correct approach to openness of Green Belt land. Mr Easton submitted that it requires consideration of whether the adverse impact on openness is sufficient to take it out of the in principle appropriateness of mining operations development. With respect, I do not agree with that analysis. The point made by Ouseley J – later effectively approved in the Court of Appeal by Richards LJ (with whom Moore-Bick LJ and Kitchen LJ agreed), at [41] and following – was that consideration of whether there was any harm to openness of Green Belt land does not only involve consideration of spatial impact, but, in some cases, may also involve consideration of other factors such as the purpose of development, and its duration and remediability. Where in other circumstances

development with the same spatial impact might be considered to affect openness adversely, these other factors may result in there being no such adverse impact on openness. Conceptually, that is something very different from Mr Easton's analysis.

55. Whilst the result of Mr Easton's approach may well be the same in most cases, the analysis I prefer is important, because, where development that might otherwise harm openness does not do so because of other factors such as those identified in Europa Oil, on my analysis, there is no harm to openness. Therefore, unlike Mr Easton's approach that results in identified harm to openness that is justified by other factors, it does not fall foul of the principle set out by Supperstone J in R (Boot) v Elmbridge Borough Council [2017] EWHC 12 (Admin) at [34], that any adverse impact on openness will render development incapable of satisfying the proviso limb that openness is preserved.
56. Therefore, as Ouseley J described, of two developments, identical in spatial and visual impact, one may preserve openness whilst the other does not, because of these other relevant factors. Thus, although the assessment of openness involves a very different exercise from the conventional planning balance, it does involve an evaluative assessment requiring planning judgment as to whether, on the basis of all relevant factors, a development in respect of which spatial and/or visual impact may in other circumstances lead to an assessment that it does harm to (and, therefore, does not preserve) openness, in the circumstances of the particular case any adverse spatial or visual impact does not lead to such harm (and does therefore preserve openness) because of other relevant factors.
57. However, Ouseley J did not suggest that it is necessary each of for these matters to be specifically considered in every case of development in a Green Belt area in which openness is in issue. Just as with visual impact, whether these matters are relevant in a particular case will depend upon the particular circumstances of that case.
58. I appreciate, of course, that the proper interpretation of the NPPF is a matter of law for the court to determine. However, given that we are dealing with (to use Sales LJ's epithet) an "open-textured" concept, in a policy for the guidance of planning decision-makers, I am persuaded by Ms Lieven's submission that factors such as visual impact, purpose, and degree of permanence and reversibility, are not matters to which, as a matter of law, a planning decision-maker must have regard in every case in which a proposed development is in a Green Belt area, or even in every such case in which openness is an issue. They are (as Ms Lieven put it) "CREEDNZ factors", a reference to CREEDNZ Inc v Governor-General [1981] 1 NZ 172 at page 183 per Cooke J, as approved in In re Findlay [1985] AC 318 at pages 333H-334C per Lord Scarman. They are factors to which the decision-maker may have regard if, on the facts of the particular case, in the exercise of his judgment and discretion he thinks it right to do so: in other words, the decision-maker has a margin of appreciation within which he may decide just which considerations should play a part in his reasoning process (see R v Somerset County Council ex parte Fewings [1995] 1 WLR 1037 at pages 1049H-1050A per Simon Brown LJ). In deciding which considerations should play a part, the decision-maker must of course be guided by the policy looked at as a whole, including its broad objects; but, once he has made that decision, this court will only interfere, on conventional public law grounds, if he strays outside that margin (R (Plant) v London Borough of Lambeth [2016] EWHC 3324 (Admin) at [62]-[63] per Holgate J, and the cases to which he there refers).

59. Whilst the relevant principle derives from cases in which a statute does not identify, expressly or impliedly, considerations that are required to be taken into account by an authority as a matter of legal obligation, a parallel principle must apply to a situation where, as here, such considerations are not identified by a policy that a decision-maker must take into account.
60. Mr Village boldly submitted that it was irrational for the Officers' Report not to take into account visual impact when considering openness of the Green Belt; but I do accept that proposition.
61. As Mr Village concedes, as a discrete planning consideration, visual impact was properly considered in the Officers' Report. Whilst I do not accept the contention made on behalf of the other parties that Mr Village's submission amounted to no more than a complaint that that consideration was not simply repeated verbatim in the Officers' Report under the heading "Impact on the Green Belt" – because his submission is that visual impact was not in substance taken into account in the consideration of impact on openness – the potential visual impact of the proposed development as identified in that earlier part of the report was clearly limited. I refer to it in paragraphs 25-26 above: Mr Village particularly relied upon the evidence from the County Planning Authority that the proposed bunding and planting intended to screen the ongoing mineral extraction operation, in the long-term, "could cut off the long distance views that are currently obtained."
62. I accept that there was some evidence that the proposed development might result in some potential adverse visual impact. But that evidence was limited. The Officers' Report was written for members of the Committee, who, as Mr Easton forcefully submitted), given the lengthy planning history, can be taken to have been entirely familiar with the quarry, its proposed extension and the likely visual and other impacts; and it was written to enable them to take a properly informed decision on the real issues to which the application gave rise. The issue in relation to impact of the Green Belt focused upon openness, in respect of which, without any doubt, the main relevant factors were the spatial impact of the quarry extension, and the factors that will often be relevant to mining operations identified by Ouseley J in Europa Oil: the reason for the development, the fact that minerals can only be won where they are found, the duration of the development and reversibility. I appreciate that the Committee's decision was made before Sales LJ's consideration of Timmins in Turner – and, therefore, if the officers or Committee had considered the issue, they may have done so on the basis that Green J's propositions were good law – but, in this case, there is no evidence that, discrete from spatial impact, visual impact was ever regarded as a major issue in relation to openness.
63. Mr Village is, with respect, not right to say that, in respect of the issue of openness, the Officers' Report considered only spatial impact; because, in paragraphs 7.117-7.126 of the Officers' Report, as the officers were entitled to do, as well as spatial impact, the "Europa Oil" factors were clearly taken into account, in coming to the conclusion at paragraph 7.126 that the proposed development would not materially harm the openness of the Green Belt. (I deal with the issue arising out of the phrase "materially harm" in Ground 2 below: paragraph 70 and following.)
64. I stress that we are here concerned with differential impact, i.e. the potential adverse visual impact over and above the adverse spatial impact. On the facts of this case –

very different from, e.g., those in Turner – it is difficult to see what the potential visual impact of the development would be over and above the spatial impact, which, as Mr Village concedes, was taken into account. In any event, even if there were some such impact, that does not mean that openness would be adversely affected; because, in assessing openness, the officers would still have been entitled to take into account factors such as the purpose of the development, its duration and reversibility, and would have been entitled to conclude that, despite the adverse spatial and visual impact, the development would nevertheless not harm but preserve the openness of the Green Belt.

65. In this case, the potential visual impact of the development falls very far short of being an obvious material factor in respect of this issue. In my judgment, in the circumstances of this case, the report did not err in not taking into consideration any potential visual impact from the development. Indeed, on the facts of this case, I understand why the officers would have come to the view that consideration of visual impact would not have materially added to the overarching consideration of whether the development would adversely impact the openness of the Green Belt.
66. For those reasons, in the circumstances of this case, I do not consider that the Officers' Report was deficient in not referring to visual impact in the context of impact on the openness of the Green Belt.
67. However, if I am wrong in that, and if the Officers' Report failed to comply with a legal obligation to consider visual impact, then, for essentially the same reasons, I would find that, had it done so, the conclusion – that the openness of the Green Belt would be preserved – would have been the same. Indeed, I am quite satisfied that that would have been the case.
68. In relation to delay in bringing this claim, Ms Lieven submitted with great force that, had the Claimants raised this issue with the Council after the 9 February 2016 but before the grant of planning permission on 22 September 2016, then the Committee would have obtained from the officers a short supplemental report which would have been to that effect. Certainly, given the – at most – very minor role that visual impact plays in respect of openness in the circumstances of this case, I accept that the officers' conclusion on the issue of openness would not in any event have been any different.
69. However, for the reasons I have given, I do not consider that the Officers' Report was deficient, as a matter of law. Consequently, Ground 1 fails.

## Ground 2

70. The focus of this ground is upon the sentence in paragraph 7.126 of the Officers' Report (repeated in paragraph 8.5):

“Due to the proposed restoration of the temporary quarry and the fact that it is considered the proposal doesn't conflict with the aims of the Green Belt, *it is considered that the proposed development would not materially harm the character and openness of the Green Belt*, and would, therefore, comply with ...the NPPF.” (emphasis added).

71. Mr Village submits that the findings on openness in the Officers' Report are inconsistent. At paragraph 7.122, it is stated that the "proposed development preserves the openness of the Green Belt", in which it is implicit that the development would not harm openness at all. However, in the quoted passage from paragraphs 7.126 and 8.5 of the report, it is stated that the development would not "materially harm" openness, in which it is implicit that the development would harm openness to some extent. Not only is that an inconsistency, but if, as it appears, the overall finding is as set out in the conclusion paragraphs, the paragraph 90 proviso is not met; because, if there is any harm at all to openness, irrespective of whether the officer or planning decision-maker considers such harm as there is to be "material", then the proviso cannot be met.
72. This ground, which leans heavily upon the foundations of Ground 1, falls for essentially the same reasons. In other circumstances, "no material harm" may suggest some harm that is rendered immaterial by other material considerations as part of the usual planning balancing exercise. However, here, "no material harm to openness", looked at in its full context, does not mean that there is some harm to openness but that harm is outweighed by other factors: it means that, despite some adverse spatial impact, in view of the "Europa Oil" factors (of which specific reference is made in paragraph 7.126 to proposed restoration), there is no harm to openness at all. That is entirely consistent with the finding made in paragraph 7.122.

### Ground 3

73. "Openness" concerns freedom from all development (see Turner at [9] per Sales LJ). Section 55(1) of the 1990 Act defines "development" to include "mining... operations".
74. Paragraph 7.122 of the Officers' Report says:
- "Openness is not defined, but is commonly taken to be the absence of built development."
75. Mr Village submits that that was materially misleading because, in saying that openness is the absence of built development, it wrongly suggested that other forms of development (including mineral operations) have no part to play in the assessment of openness; or, at least, "mineral operations are intrinsically less likely to impact on openness than built development".
76. However:
- i) The wording of which complaint is made merely says that openness is "commonly taken" to be the absence of built development, not that consideration of openness is necessarily restricted to that of such development.
  - ii) In any event, looking at the Officers' Report as a whole, it is clear that this reference does not suggest that development other than built development is irrelevant in the assessment of openness. The proposed quarry extension was obviously not built development; and, if the officers had intended to convey that development other than built development was irrelevant to the issue of impact on the Green Belt, the report could (and, no doubt, would) simply have

said so. In fact, the Officers' Report did not confine itself to a consideration of "built development": paragraph 7.121 sets out the correct proviso tests (including whether the development would preserve the openness of the Green Belt), and the report includes a section of ten paragraphs (paragraph 7.117-7.126) dealing with the merits of "Impacts upon the Green Belt". Plainly, the report was not saying that, as a matter of law or principle, a quarry including no built development could not give rise to an impact on openness.

- iii) Nor did that single sentence wrongly suggest that "mineral operations are intrinsically less likely to impact on openness than built development". Ms Lieven submitted that the very effect of paragraph 90 was that the starting point for mineral extraction development is that it is intrinsically less likely to impact on openness than built development; and, certainly, for the reasons I have given when dealing with Ground 1 above, the starting point for mineral extraction (in principle not inappropriate) is different from the starting point for built development (in principle inappropriate). Although I accept that the sentence of which complaint is made is not drafted as precisely as a lawyer might have done, it seems to me merely to reflect the different starting point of built development outside the listed exceptions in paragraph 89, and mining operations that fall within paragraph 90. In any event, I do not consider it is arguable that it was misleading in the manner in which Mr Village suggests.

#### Ground 4

77. This ground again focuses upon the following sentence in paragraph 7.122 of the Officers' Report:

"Although the proposed development would be on existing agricultural land, it is considered that *because the application site immediately abuts the existing operational quarry*, it would not introduce development into this area of a scale considered to conflict with the aims of the preserving the openness of the Green Belt." (emphasis added).

78. Mr Village submits that this was materially misleading because it indicated that, simply because the proposed development abutted an existing operational quarry, it would not be in conflict with the aim of preserving openness of the Green Belt.
79. I see no force in this ground. The fact that the Application Site is immediately adjacent to an existing quarry, operational at the time of the challenged decision, which the proposed development simply extends (albeit, I accept, by about a quarter in extent), is clearly a relevant factor in respect of openness. Although the sentence complained of uses the word "because", looked at sensibly, it cannot be intended to suggest that openness of the Green Belt is preserved solely on the basis that the development is next door to an existing quarry. The discussion about other relevant factors belies that interpretation.

#### Conclusion

80. This is a rolled-up hearing. As will be apparent from the above, I consider some grounds to have more merit than others. However, I grant permission to proceed on

all grounds. Having done so, for the reasons I have given, I refuse the substantive application for judicial review on each ground.

81. In those circumstances, it is unnecessary for me to deal with the issues of delay and failure to send a pre-action protocol letter, pursued particularly by Mr Easton.