

Submission response to Bournemouth, Dorset and Poole Mineral Sites Plan Inspector's Matters, Issues and Questions (MIQs)**Session 21**MIQ no.158

Further consideration of the drainage channels on site will be given at the planning application stage. However, such channels can be retained were appropriate or otherwise diverted to mitigate impacts on flows downstream. The current waterbody located towards the eastern end of the site is likely to be retained and if appropriate incorporated into the water management regime that will be required to protect the environment.

MIQ no.160

With appropriate mitigation measures that may include inter alia the use of temporary soil bunds and tree planting the impact on heritage assets will be minimised, and demonstrable by means of appropriate technical assessments.

MIQ no.161

Further consideration of these potential issues should be assessed at the appropriate planning application stage.

MIQ no. 162

We consider there is no need for more direction, particularly as such matters will need to be addressed on a site by site basis at planning application stages.

MIQ no. 163

Measures will be put in place, that are likely to include settlement lagoons and wetlands to 'polish' the water before discharge into any local watercourse. Discussions have already been held between the EA and the Estate as to the potential inclusion of wetlands that may also allow for the mitigation of nitrates from waters that have passed through / emanate from agricultural lands.

MIQ no. 164

The Development Guidelines should encourage such practices and indicate that such measures will be given significant weight in the allocation and planning processes.

MIQ no. 167

No. This is a matter for the statutory consultee at the time of planning application.

Halletec Environmental Ltd on behalf of Moreton Estate

In addition to the above, Dr Peter Wardle of the Historic Environment Consultancy has provided the following comments on behalf of the Moreton Estate in relation to Session 21:



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Heritage Asset is not a synonym for a shop, a plant, ditches or even archaeological remains. This is not to say that these are not worthy of consideration by the planning system but these do not necessarily enjoy the protection of Heritage Assets. Many shops are heritage assets but the vast majority are not. Many trees are protected by virtue of being in a Conservation Area but trees outside are not. There is a separate protection regime for trees. Similarly Hedgerows are protected by the Hedgerow Regulations 1997. Trees and Hedgerows may be historic but this does not automatically make them Heritage Assets.

The NPPF para 186 notes the need to not devalue the concept of conservation by the designation of areas that lack special interest.

Something can only become a Heritage Asset by designation or recognition as such by the planning authority. Absurd as this may sound Historic England cannot (legally) call something an undesignated heritage asset.

For Archaeological Remains the normal threshold for their destruction by development is below "National Importance" preceded by archaeological excavation. In the case of sites AS 25 Station Road, Moreton & AS 26 Hurst Farm, Moreton there is nothing to suggest that such archaeological remains are present. At the planning application stage archaeological investigation will take place to determine if any currently unknown archaeological sites of national importance are present.

Post Consent a programme of archaeological investigation and recording will be required by planning condition. This is adequate mitigation for all archaeological remains which are not nationally important.

I think the Mineral Planning Authority have applied this balancing act correctly with regard to the impact on archaeological remains.

There have been a large number of Judicial Reviews and Appeals relating to the definition of setting and the degree of harm that will result from say a new building. A comprehensive account of the current legal situation can be found in the judgement of case: [2018] EWCA Civ 1697 Catesby Estates Ltd v Peter Steer v Historic England.

It is very rare that harm to a Heritage Asset's setting (designated or undesignated) is regarded as "Substantial Harm"; this is the case even with Iconic World Heritage Sites such as Hampton Court. (see Garner v Elmbridge Borough Council [2011] EWCA Civ 891).

A well known case is Barnwell Manor Wind Energy Ltd. v. East Northants DC [2014] EWCA Civ 137. This case involved a unique Grade 1 listed building, scheduled as an Ancient Monument and a Grade 2* Registered Park and Garden owned by the National Trust. The appeal inspector concluded that the harm was not substantial because it was obvious that a wind farm was an obvious modern addition. At Judicial Review and appeal it was noted that in this case the setting was key to the significance of the building. They also noted that the building was of the Highest Significance.

Lyveden New Build was built in a unique design to dominate the landscape with commanding views of its surroundings which are relatively unchanged.

Normally harm to the setting of Heritage Assets is regarded as less than 'substantial harm' and can be outweighed by public benefit. For example in appeal Malvern Hills 17/00093/FUL the appeal inspector regarded 180 houses as having minor harm despite the presence of numerous listed buildings and a historic park and garden, and thus the harm was easily outweighed by the provision of new housing.

Parliament's intentions with the 1991 Town and Country (Listed Buildings and Conservation Areas) Planning Act are clear: harm to the setting of a listed building or conservation area is not an automatic reason for refusal.

It has to be accepted that in virtually every case harm to setting is regarded as less than 'substantial harm' and can thus be outweighed by Public Benefit. The NPPF notes the public

benefit of mineral extraction. The decision maker in the planning balancing Act is the planning authority or the Secretary of State.

I think the Mineral Planning Authority have applied this balancing act correctly with regard to the impact on the settings of Listed Buildings.

It has to be accepted that people discover their heritage when they realise it is a weapon against a planning application. They have a perfect right to do so. The most extreme example is Goring Parish Council v South Oxfordshire District Council. [2018] EWCA Civ 860. The District Council's case was that as Goring Parish Council did not object on heritage grounds at the application stage then the District Council were not obliged to consider the impact on the setting of listed buildings and two conservation areas in detail.

FRAME have suggested that the Moreton Estate have failed to undertake a professional Heritage assessment of their land in the context of these mineral allocations. This statement is clearly untrue.

Dr Peter Wardle 3/9/2018

Definitions

Archaeological Remains - "*remains*" includes any trace or sign of the previous existence of *the thing in question*." 1979 Ancient Monuments and Archaeological Areas Act 61

Interpretation (13)