

PROPOSED SAND AND GRAVEL EXTRACTION AND RESTORATION TO AGRICULTURE AND NATURE CONSERVATION, WALLINGFORD OXFORDSHIRE

REBUTTAL

EA IN PRINCIPLE POLICY OBJECTION – LETTER DATED 12 JANUARY 2023

Introduction

It is difficult to understand why the EA have now raised a belated planning policy-based, in-principle objection to the Wallingford sand and gravel extraction proposals after many months of persistent requests for further detailed information and assessment of detailed flood risk considerations.

The apology for this new area of objection appears flimsy and insincere. Rather, it appears that efforts have been made to bolster weak and somewhat pedantic technical concerns with a broader policy-based argument recently assembled to try and override the strong likelihood that the minor technical aspects and detailed queries/concerns over the modelling and the modelling outputs will be overcome and clarified.

This approach is not acceptable and is not in the public interest.

The policy objection appears poorly evidenced and is unlikely to stand proper planning or legal scrutiny. To make clear why the EA have got this fundamentally wrong an explanation of the policy position and clarification of definitions and distinctions that are important to the case and which the EA should have been clear on from the outset are set out below.

In doing so it is important to initially make clear how the hierarchy of policy works.

As the EA have now sought to bring the NPPF to the applicant's attention we would draw their attention to paragraph 2 of the NPPF 2021, which states:

"Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan and is a material consideration in planning decisions."

This makes clear the primacy and importance of the Development Plan, and this rebuttal will demonstrate its importance in this case and how the NPPF and its flood risk requirements have been properly considered within the minerals element of the Development Plan. In this case, which is a minerals case, the rebuttal will place proper emphasis on the Oxfordshire Minerals and Waste Local Plan Part I Core Strategy – adopted in 2017. It is notable, in their policy objection, that the EA have chosen to ignore the content of the Minerals and Waste Local Plan, even though their objection is based around suggested classifications of mineral and waste activities/operations.

Also, the EA, whilst now "praying in aid" of the NPPF and the latest PPG on flooding, appear to have chosen to avoid reference to some of the legislative definitions that underpin these guidance documents or case law which sets legal precedent.

It is also important, when dealing with policy matters, to endeavour to look at the supporting text and explanation to policies as well as the legislative framework that underpins those policies. There is no obvious evidence of this in the EA's new area of in-principle policy-based objection.

The basic point that the EA have based their policy objection upon is that they believe the backfilling of the phased sand and gravel working with inert material to reclaim and progressively restore the land to a mix of nature conservation (ecological uses) and high grade agriculture is in fact a “landfill” development and that such development is classed as vulnerable to flooding and policy indicates such a development is unacceptable in flood zone 3b.

We do not dispute that a landfill development is inappropriate development in flood zone 3b, but we strongly dispute that the proposed programme of reclamation and restoration is a landfill and must emphasise that public policy and law make quite clear that the infilling and restoration are in fact recovery and restoration operations - that fall outside of the classification of landfill - and are accepted by mineral policy as being acceptable in certain circumstances in flood zone 3b.

The Oxfordshire Minerals and Waste Local Plan – Part 1 Core Strategy – September 2017

When reading the flooding aspect of this policy document, it is necessary to also consider the supporting text to the policy and also to consider appendices to the Local Plan. It is also necessary to consider policy proposals which intend to deliver the Core Strategy in regard to the form of development that is proposed, particularly as flood risk considerations have been taken into account and SFRA/sequential testing done to arrive at those policy proposals.

The following aspects are considered relevant to the rebuttal of the EA’s policy-based objection (which, interestingly, chooses not to refer to these important elements of the Development Plan, which the NPPF makes clear is the key policy document).

Flooding Chapter

Para 6.11

“Sand and gravel working is ‘water compatible development’ – a category of development that is at the lowest vulnerability to flooding. Sand and gravel working is the only form of mineral extraction that can take place in the functional flood plain (Flood Zone 3b), provided a sequential test is undertaken. Other mineral working and all processing activities have a higher flood risk vulnerability classification.”

Para 6.12

“Processing activity associated with sand and gravel working may involve plant and machinery or the formation of stockpiles, all of which can displace flood water, reduce flood water storage and interfere with water flows at times of flood. Such development can take place in areas that are at some risk of flooding (see Appendix 3) but not in the functional flood plain. As mineral working may span more than one flood zone a sequential approach to layout is needed. For sand and gravel working and processing this means that any development likely to displace flood water (including stockpiles) should be located on land that is outside the functional floodplain.”

Comment – we have located the plant site and stockpiles such that they are well distanced from the functional floodplain and have therefore taken a sequential approach to the layout of the development, with the most vulnerable aspect out of functional floodplain and the water compatible extraction and restoration situated in the functional floodplain.

Para 6.13

“Waste development, depending on the nature of the operation, is not appropriate in the functional flood plain. This includes landfill operations - which may raise ground levels and pollute or disrupt groundwater flows. Where waste development is allowed in areas at lower risk of flooding (see

Appendix 3) the sequential test and, for landfill sites, the exceptions test must first be satisfied. The potential for pollution to groundwater should also be taken into account (see paragraph 6.16). Inert waste may need to be imported to a site to achieve the satisfactory restoration of a sand and gravel working situated in the flood plain and this can take place in certain circumstances and where there is overall improvement to flood storage capacity.

Comment – this paragraph is of particular relevance and demonstrates that the EA line of argument is not properly evidenced. It is clear from para 6.13 that this directly relevant part the Development Plan is drawing a distinction between a waste development/landfill and importing inert waste to secure satisfactory restoration of sand and gravel operations taking place in the floodplain in certain circumstances.

In this case, there are circumstances that prevail that necessitate bringing in inert fill to progressively backfill and restore the land to original levels and establishment of soft end uses (agriculture and nature conservation/ecology) and thus avoid leaving residual water bodies. The site is situated both in the floodplain and the MoD Safeguarding Zone to protect aircraft from birdstrike hazard at RAF Benson. Whilst the proposed sand and gravel site is located in an identified Strategic Resource Area in the Minerals and Waste Local Plan Core Strategy (on the basis of a need to sustain aggregate supply) the MoD will not allow restoration to open water, which would attract flocking birds with resultant risk to aviation safety. As agriculture and nature conservation are the only suitable end-uses in a floodplain location it is proposed to progressively restore the site to floodplain grazing marsh, with a network of narrow open ditches and an area of wet woodland, along with an area of best and most versatile agricultural land (BAMVAL). These uses are acceptable to the MoD and are also policy compliant with the Minerals and Waste Local Plan as they retain BAMVAL and deliver biodiversity net gain.

We would argue most strenuously that the planning policy circumstances set out, particularly with the site located in an identified SRA - that is backed by SFRA and sequential testing (see below) by the Mineral Planning Authority, is sufficient to justify the import of inert fill material for the phased and progressive restoration of the sand and gravel operation (which is water compatible development), and that the creation of grazing marsh, additional open ditches and low lying wet woodland (and no raising of ground levels) will give an overall improvement to flood storage capacity besides the floodwater storage capacity that will be provided whilst there is a working extraction void.

Para 6.14

“The Strategic Flood Risk Assessment (SFRA) assesses the extent to which future minerals and waste development in Oxfordshire may be at risk of flooding or increase flood risk to other property. This also takes into account the future impact of climate change. The SFRA did not identify a flood risk from potential waste development, but identified that many of the possible locations for sand and gravel working are in areas that are vulnerable to flooding. A sequential test of potential areas has been undertaken and established that land to meet Oxfordshire’s aggregate requirement cannot reasonably be met without extracting sand and gravel from sites that lie in the functional floodplain.”

Comment- as referred to above, this paragraph highlights that the Minerals and Waste Plan was supported by evidence gathered through Strategic Flood Risk Assessment (SFRA) and sequential testing. The EA would have been consulted on both the production of the Local Plan and also the SFRA and sequential testing. Additionally we would point out that the Local Plan was then subjected to Enquiry in Public (EiP) where this evidence and the advice and comments of the EA were thoroughly tested. This process led to the adoption of mineral planning policy – see references below to Policy M3 – which identified principal locations for sand and gravel extraction – Strategic Resource Areas – from which extraction sites are expected to be delivered in the Thames Valley.

To stress our site is located within one of the identified parts of the Thames Valley and the above paragraphs demonstrates that it is backed by SFRA, sequential testing by the MPA and falls within the strategy to sustaining sand and gravel extraction through sites situated in floodplain, which again is part of the circumstances surrounding the restoration requirements for this site.

“Policy C3: Flooding

Minerals and waste development will, wherever possible, take place in areas with the lowest probability of flooding. Where development takes place in an area of identified flood risk this should only be where alternative locations in areas of lower flood risk have been explored and discounted (using the Sequential Test and Exceptions Test as necessary) and where a flood risk assessment is able to demonstrate that the risk of flooding is not increased from any source, including:

- an impediment to the flow of floodwater;*
- the displacement of floodwater and increased risk of flooding elsewhere;*
- a reduction in existing floodwater storage capacity;*
- an adverse effect on the functioning of existing flood defence structures; and the discharge of water into a watercourse.*

The opportunity should be taken to increase flood storage capacity in the flood plain where possible, particularly through the restoration of sand and gravel workings.”

Comment - the proposed temporary (short-term) operational development is supported by a flood risk assessment, along with further analysis, explanation and updated assessment carried out by flood risk experts. This demonstrates there would be:

- low probability of a 1 in 100 year event (with 12% added for climate change) taking place during the short-term, temporary operations;
- no impediment to flood-flow as a result of the operations;
- no displacement of floodwater or any clear evidence to confirm an increased risk of flooding elsewhere (or any decreased risk of flooding elsewhere) as a consequence of the temporary operations;
- no reduction in existing floodwater storage capacity – in fact, some additional capacity during operational phases and also post restoration;
- no impact on the functioning of flood defences or discharges into watercourses

The development therefore complies with the most relevant planning policy regarding mineral working and flooding contained in the Development Plan.

Appendix 3.

Flood Vulnerability Classification and Flood Zone Compatibility

Landfill sites - More Vulnerable - Flood Zone 1 and 2 (and exceptionally 3a)*

Sand and Gravel Workings - Water Compatible - Flood Zone 1, 2, 3a, 3b

Sand and Gravel processing sites (including grading and washing plant) - Less Vulnerable - Flood Zone 1, 2, and 3a

Table developed from Tables 2 and 3 in National Planning Practice Guidance, Flood Risk and Coastal Change, Flood Zone and Flood Risk Tables, March 2014.

Waste management categories are based on guidance in National Planning Practice Guidance, Waste, October 2014.

** Inert waste imported for the restoration of sand and gravel workings not included where imported as part of a recovery operation (an increase in flood storage capacity is likely in these circumstances).*

Comment – It is absolutely clear from this part of the Minerals and Waste Local Plan (a most relevant element of the Development Plan) that a distinction is being made between necessary importation of inert fill to restore sand and gravel working, like those in the planning application, which are classed as a “recovery operation”, and landfill sites.

The EA have failed to take account of this distinction, which should be read in conjunction with the other paragraphs and policies referred to (particularly par 6.13). In their letter of 12 January the EA have belatedly attempted to classify the site as a landfill, which is obviously contrary to what the Development Plan says on restoring sand and gravel workings with inert fill to secure their restoration in the functional floodplain.

The Minerals and Waste Local Plan, which the EA letter (unbelievably) conveniently ignores (whilst the NPPF tells them it is potentially the most important document in the consideration of the planning application), helpfully explains the process that has been gone through – balancing constraints of geological location with need for aggregate and the carrying out of SFRA and sequential testing concerning flood risk. In that regard it should be clear to the EA that there is a need for sand and gravel, it will be sourced from the floodplains of the River Thames, and there are likely to be circumstances where these water compatible operations will need to be restored using inert fill, and that such “recovery” operations are not to be classed as landfill development.

As explained – the proposed end-uses are totally policy compliant with the Development Plan and it is not appropriate for sites in this part of the floodplain to be restored to open water due to aviation safety guidance and concerns.

Policy M3: Principal locations for working aggregate minerals

The principal locations for aggregate minerals extraction will be within the following strategic resource areas, as shown on the Policies Map:

Sharp sand and gravel

in northern Oxfordshire (Cherwell District and West Oxfordshire District):

- *The Thames, Lower Windrush and Lower Evenlode Valleys area from Standlake to Yarnton;*

in southern Oxfordshire (South Oxfordshire District and Vale of White Horse District):

- *The Thames and Lower Thame Valleys area from Oxford to Cholsey;*
- *The Thames Valley area from Caversham to Shiplake.*

Soft sand

- *The Corallian Ridge area from Oxford to Faringdon;*

- The Duns Tew area.

Crushed rock

- The area north west of Bicester;
- The Burford area south of the A40;
- The area east and south east of Faringdon.

Specific sites (new quarry sites and/or extensions to existing quarries) for working aggregate minerals within these strategic resource areas will be allocated in the Minerals & Waste Local Plan: Part 2 – Site Allocations Document, in accordance with policy M4.

Specific sites for extensions to existing aggregate quarries (excluding ironstone) outside the strategic resource areas may also be allocated in the Minerals & Waste Local Plan: Part 2 – Site Allocations Document provided they are in accordance with policy M4.

Sites allocated for sharp sand and gravel working (including both new quarry sites and extensions to existing quarries, including any extensions outside the strategic resource areas), to meet the requirement in policy M2 will be located such that approximately 25% of the additional tonnage requirement is in northern Oxfordshire and approximately 75% of the additional tonnage requirement is in southern Oxfordshire, to achieve an approximately equal split of production capacity for sharp sand and gravel between northern and southern Oxfordshire by 2031.

Comment – this most important policy relating to sand and gravel supply and proposals confirms the application site is located in a principal location for extraction – a Strategic resource Area (SRA) – and is sited in South Oxfordshire where an increase in supply is sought during the plan period. These strategic level Development Plan policies again highlight the “circumstances” that relate to the working and restoration of this proposal site.

Policy M5: Working of aggregate minerals

Prior to the adoption of the Minerals & Waste Local Plan: Part 2 – Site Allocations Document, permission will be granted for the working of aggregate minerals where this would contribute towards meeting the requirement for provision in policy M2 and provided that the proposal is in accordance with the locational strategy in policy M3 and that the requirements of policies C1 – C12 are met.

Permission will be granted for the working of aggregate minerals within the sites allocated further to policy M4 provided that the requirements of policies C1 – C12 are met.

Permission will not be granted for the working of aggregate minerals outside the sites allocated further to policy M4 unless the requirement to maintain a steady and adequate supply of aggregate in accordance with policy M2 cannot be met from within those sites and provided that the proposal is in accordance with the locational strategy in policy M3 and the requirements of policies C1 – C12 are met.

Permission will exceptionally be granted for the working of aggregate minerals outside the sites allocated further to policy M4 where extraction of the mineral is required prior to a planned development in order to prevent the mineral resource being sterilised, having due regard to policies C1 – C12.

Comment – quite simply this Development Plan policy confirms that operational sites have the potential to come forward and be permitted in advance of the production of a Site Allocations

Document, which in Oxfordshire continues to be heavily delayed. There is, therefore, no question of this proposal being classed as “premature” in planning policy terms.

The National Planning Policy Framework (NPPF) - 2021

As explained, the NPPF is a material consideration to take into account having first taken specific account of the Development Plan (particularly the Minerals and Waste Plan 2017 for a development of this kind).

Para 167

When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:

- a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;*
- b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;*
- c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;*
- d) any residual risk can be safely managed; and*
- e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.*

Comment – the latest flood risk assessment and further analysis has shown that, in real and measurable terms, flood risk is not increased elsewhere. There are potential slight long-term flood risk benefits of the scheme post-restoration in terms of additional flood water storage. The assessment confirms that, as a consequence of the temporary scheme, there would be no increase in the extent of the flooding/floodplain in a potential 1 in 100 year flood event (with 12% added for climate change) and a low-probability of such an event occurring during the operational phases of the short-term, temporary mineral workings. The potential receptors identified by the assessment work are situated in the floodplain and will experience flooding (to varying degrees) in a major flood event without the presence of the proposed temporary sand and gravel workings. The further assessment/analysis and modelling carried out by the applicant’s flood risk experts confirms there is no clear, reliable evidence to show any potential benefits as a result of the operational phases (i.e., decreases in flood depths) nor any demonstrable increases in flood depths in the floodplain when accepted modelling instabilities and inaccuracies are taken into account. Therefore, there is no clear evidence to indicate that the short-term, temporary operations would increase flood risk elsewhere whilst they are being carried out and no evidence to indicate any increased flood risk elsewhere upon completion of the operations and restoration of the site (and maybe a slight potential benefit due to lower levels in parts of the site).

As already mentioned, the plant site (temporary structures/operations) has been located in the part of the site with the lowest risk of flooding – out of the floodplain.

The development is flood resilient -with a temporary operational mobile development that can easily recommence and be completed after a major flood event.

The proposed mix of end-uses includes improvements to open drains, creation of new sections of drain, creation of wet woodland and establishment of floodplain grazing marsh. The proposed land drainage network within a substantial area of soft end-uses with biodiversity benefits and water absorption capacity and some flood storage capacity is considered sustainable in all respects.

There is no residual risk to be managed given the proposed restoration back to original levels and flood-resilient after-uses and sustainable drainage systems. There will be no human occupation of the site and therefore no need for an emergency plan. During the operational phases, in the event of a major flood event, personnel and machinery can easily be removed from areas at risk of inundation.

Annex 3 to the NPPF 2021

This is a crucial area of consideration which the EA have relied on to support their newly developed policy objection. The explanation below, with proper consideration of the references and background legislation, confirms their approach to be incorrect, particularly when these “material considerations” are placed alongside the important points about sand and gravel restoration set out in the Minerals and Waste Local Plan 2017.

Annex 3 classes sand and gravel working as “Water Compatible Development”.

Annex 3 classes “landfill* and sites used for waste management facilities for hazardous waste” as “More Vulnerable”. It is this that the EA has relied on in their letter of 12 January to support their policy objection. As has already been seen, the Development Plan, makes clear the distinction between restoring sand and gravel workings with inert waste and landfill development. Our proposals are clearly the former, as the inert fill is only being brought in to reclaim and restore the extraction site back to original levels with appropriate floodplain after-uses.

The Asterix next to the word landfill in Annex 3 is important and the EA have not referred to it.

**“Landfill is as defined in Schedule 10 of the Environmental Permitting Regulations 2010”*

The Environmental Permitting Regulations 2010

These state at paragraph 2(d):

“landfill” has the meaning given in Article 2(g) of the Landfill Directive, but does not include any operation excluded from the scope of that Directive by Article 3(2).

Council Directive 1999/31/EC of 26 April 1999 on the Landfill of Waste

This states as follows:

Article 2

(g) “landfill” means a waste disposal site for the deposit of the waste onto or into land (i.e. underground), including:

- internal waste disposal sites (i.e. landfill where a producer of waste is carrying out its own waste disposal at the place of production), and

- a permanent site (i.e. more than one year) which is used for temporary storage of waste,

but excluding:

- facilities where waste is unloaded in order to permit its preparation for further transport for recovery, treatment or disposal elsewhere, and
- storage of waste prior to recovery or treatment for a period less than three years as a general rule, or
- storage of waste prior to disposal for a period less than one year;

Article 3

2. Without prejudice to existing Community legislation, the following shall be excluded from the scope of this Directive:

- the spreading of sludges, including sewage sludges, and sludges resulting from dredging operations, and similar matter on the soil for the purposes of fertilisation or improvement,
- the use of inert waste which is suitable, in redevelopment/restoration and filling-in work, or for construction purposes, in landfills,
- the deposit of non-hazardous dredging sludges alongside small waterways from where they have been dredged out and of non-hazardous sludges in surface water including the bed and its sub soil,
- the deposit of unpolluted soil or of non-hazardous inert waste resulting from prospecting and extraction, treatment, and storage of mineral resources as well as from the operation of quarries.

Comment – it is clear from the Environmental Permitting Regulations that “landfill” does not include any operation excluded from its scope by the Landfill Directive. The Landfill Directive clearly excludes from its scope the use of inert waste that is suitable for restoration and filling-in work. Therefore, quite clearly the definition of “landfill in Annex 3 of the NPPF, under the “More Vulnerable” category of development, excludes infilling of sand and gravel workings with inert material for restoration as the Asterix and references given in the NPPF take the reader to the Permitting Regulations and Landfill Directive which exclude these restoration operations from the definition of landfill. This then sits in obvious support of the text and policy of the Minerals and Waste Local Plan for Oxfordshire 2017 which itself draws a distinction (presumably on the basis of this legislative support) between inert filling to restore sand and gravel workings and landfill development.

Put bluntly, when read properly with careful regard to the references to legislation, it is quite clear that infilling water compatible sand and gravel workings with inert fill to secure restoration is specifically excluded from being classed as a landfill.

Planning Practice Guidance (PPG) on Minerals - October 2014 – confirms that one of the key stages of mineral working, including sand and gravel working, includes filling operations to achieve the required landform prior to restoration. It also helpfully confirms that creation of new habitats and biodiversity along with agricultural uses are appropriate forms of after-use. For the EA, in their letter of 12 January, to suggest that the proposed after uses are not policy compliant is irrational. Backfilling sand and gravel workings with inert waste to deliver floodplain grazing marsh, wet-woodland and agriculture is most obviously supported by the Minerals and Waste Local Plan policies (the Development Plan) and the NPPF, and it is clear from Annex 3 of the NPPF (and the legislation that is referred to) that the legal system allows for such restoration operations as part of a mineral operation rather than a landfill development. To be crystal clear – there is no evidence in the NPPF and its references to the legal framework – to suggest that the Planning Application includes proposals for landfill development in the floodplain (zone 3b). Proper reading of the material confirms that the Planning Application proposes reclamation and restoration operations using inert fill that are specifically excluded from

classification as landfill development. This sits squarely alongside the policy position of the Development Plan that acknowledges there will be circumstances where water compatible sand and gravel operations need to be filled with inert waste to secure their restoration. In this case the Mineral and Waste Local Plan's Strategic Resource Area (SRA) for sand and gravel working in the Thames Valley in South Oxfordshire coincides with an area of aviation safeguarding for RAF Benson that precludes leaving open water areas following sand and gravel extraction. The circumstances therefore dictate the need for inert fill to backfill and restore the proposal site to floodplain compatible uses that are fully policy compliant (contrary to the EA's perverse assertion that they are not).

Case Law

It is also useful to briefly note that there has been case law, interestingly involving the EA, concerning what are landfill/disposal operations as opposed to restoration/recovery operations.

R (on the application of Tarmac Aggregates Ltd) v Secretary of State for the Environment Food and Rural Affairs and the Environment Agency (2015) EWCA Civ 1149

This case considered the important definition of "waste recovery" – as distinct from waste disposal – in the EU Waste Framework Directive.

The case evolved after the EA refused to issue an Environmental Permit, including on grounds that the proposal amounted to waste disposal rather than waste recovery.

A Court of Appeal decision on 17 November 2015 allowed Tarmac's appeal, quashed a decision of the original Inspector and replaced it with a determination that the Environment Agency should issue the necessary environmental permit.

The case explored the interaction between examples of recovery and disposal operations given in the Waste Framework Directive.

Annex 1 to the Directive sets out a non-exhaustive list of disposal operations including paragraph D1: deposit into or on to land (e.g. landfill).

Annex 2 sets out a non-exhaustive list of recovery operations, including paragraph R10: treatment resulting in benefit to agriculture or ecological improvement.

In coming to its decision the Court established that the principal objective of the operation was to use the waste to secure ecological improvement of the site and it fulfilled the definition of R10 to carry out recovery operations rather than dispose of the waste under the definition D1.

Comment – Having regard to the Minerals and Waste Local Plan 2017, it is clear that the Development Plan (which has primacy in planning policy terms), envisages circumstances in which sand and gravel workings that it seeks to deliver to sustain aggregate supply having to be infilled with inert waste to secure restoration where the site is located in the floodplain. In the case of this Planning Application, located in a SRA identified by the Minerals and Waste Local Plan, it is necessary to infill the working to secure restoration to avoid leaving open water and causing a risk to aviation safety due to bird strike hazards. The principal objective of the proposals is therefore to use inert waste to secure restore the land to original levels and establish agriculture and ecological improvements and avoid areas of residual open water. This quite clearly, like the Tarmac case, fulfils the requirements of paragraph R10 of the Waste Framework Directive as the waste recovery operations will result in benefit to agriculture and ecological improvement. Precisely the definitions used in the Annexes to the Directive.

Planning Practice Guidance – Flood Risk and Coastal Change – 25 August 2022

The EA letter of 12 January refers specifically to Table 2 of the PPG and argues that “this type of development is not compatible with flood zones 3a and 3b and should not be permitted”.

This bold and negative, unhelpful statement by a public body is, of course predicated upon their questionable assertion that the development proposed in the Planning Application is a landfill development.

The policy and legal evidence above make clear that this position is wrong.

The Planning Application is not for landfill development. The Planning Application is for sand and gravel working and restoration of the land to agriculture and ecological improvement. Due to the circumstances of the need to protect aviation safety no open water can be left and the site needs to be restored to original levels to secure agriculture and floodplain grazing marsh after-uses using inert fill as a recovery operation.

Therefore, having regard to Table 2 of the PPG 2022 the “Water Compatible” sand and gravel operations (which include restoration of the site using inert waste) are allowed to flood zones 1, 2, 3a, and 3b. In terms of the operations being carried out in flood zone 3b there are certain requirements, as follows:

Water Compatible uses should be designed and constructed to:

- remain operational and safe for users in times of flood;
- result in no net loss of floodplain storage; and
- not impede water flows and not increase flood-risk elsewhere.

As has been explained, the temporary operations can be suspended during times of flood and re-commenced easily and quickly after the flood. The development will provide some limited floodplain storage capacity both during the operational phases and post restoration with wet woodland and grazing marsh. The operations will not impede water flows in the flood plain. In terms of increasing flood risk elsewhere, it is appropriate to note that the PPG states in its opening sentence:

“Flood risk is a combination of the probability and the potential consequences of flooding.”

The site-specific FRA and the further analysis and modelling by the applicant’s flood risk experts has shown that there is a particularly low probability of a major event occurring during a short time window of the temporary extractive phases being carried out. The potential sensitive receptors are located in the floodplain and there is no clear and reliable evidence to demonstrate either a decrease in flood depths in the floodplain or any increase in flood depths as a consequence of the proposed operations - as the results (measurement outputs) of the modelling are so small that they lie outside the mathematical tolerances of the models. Therefore, there is no clear evidence to indicate that the short-term, temporary operations would increase flood risk elsewhere whilst they are being carried out and no evidence to indicate any increased flood risk elsewhere upon completion of the operations and restoration of the site (and maybe a slight potential benefit due to lower levels in parts of the site).

Conclusions

The following important points emerge from the analysis above:

- The Development Plan, including the Minerals and Waste Local Plan (MWLP) for Oxfordshire 2017, specifically envisages circumstances where sand and gravel extraction operations (which are water compatible operations) located in the floodplain may need to be infilled with inert waste to enable restoration. The MWLP does not classify these operations as landfill, but as necessary recovery operations to restore the land and return it to beneficial after-use.
- The MWLP policies have been subject to SFRA and sequential testing and the policies make clear it is necessary to deliver sand and gravel extraction (and restoration) in the River Thames floodplain in order to sustain sufficient supply of sand and gravel.
- The proposals comply with the MWLP policies concerning flooding and flood risk.
- The NPPF 2021 is a material consideration, and the proposals comply with paragraph 167 concerning flood risk.
- Careful reading of Annex 3 of the NPPF confirms that underpinning legislation excludes infilling of mineral workings with inert waste to secure their restoration from the definition of landfill. This casts complete doubt over the assertions of the EA in their letter of 12 January that the proposals involve landfill.
- For the avoidance of doubt the Environmental Permitting Regulations 2010 and particularly the Landfill Directive 1999, exclude the use of inert waste for infilling and restoration work from the definition of landfill, which, given the references in Annex 3 of the NPPF, confirms that such operations form part of restoring sand and gravel workings (water compatible) rather than landfill (More Vulnerable) The PPG on Minerals 2014 confirms that infilling to achieve suitable landforms is a key stage of mineral working operations.
- Case law, which sets precedent, and which upheld Tarmac Aggregates Ltd appeal against the EA's refusal to issue an environmental permit at Methley, makes clear that, if the principal objective of the use of waste is to secure benefit to agriculture and ecology, a "recovery operation" is proposed rather than a disposal operation (e.g. landfill). This case law relies on the definitions set out in Annex 1 and 2 of the Waste Framework Directive. Annex 1 sets out disposal operations. Category D1 is deposit into or on to land (e.g. landfill). Annex 2 sets out recovery operations. Category R10 is land treatment resulting in benefit to agriculture or ecological improvement. It is important to note that this sand and gravel extraction planning application proposes restoration to high grade agricultural land and the establishment of floodplain grazing marsh and wet woodland to achieve biodiversity net gain with no raising of levels above original ground levels.
- The EA's argument that the proposal runs contrary to PPG on flood risk and coastal change 2022 is flawed as it relies on an incorrect judgment that the proposals involve landfill. The Development Plan, the NPPF, legislation on permitting, landfill and waste, along with case law, all confirm that infilling with inert waste to secure restoration of a sand and gravel extraction operation to agriculture and ecological uses is not landfill development but is a recovery operation to secure satisfactory restoration of the mineral working.

- In this case, the circumstances are such that the exhausted sand and gravel workings cannot be left to open water due to the high probability this will attract flocking birds and thus compromise aircraft safety in relation to the operation of nearby RAF Benson. The MWLP anticipates such circumstances and acknowledges that infilling of sand and gravel workings in the floodplain 9(including flood zone 3b) can take place if circumstances require.
- Contrary to the EA's belated assertions the proposals do not therefore contain a "landfill element". The proposals have been carefully designed to allow progressive infilling with inert waste to return the land to original levels and below to ensure the satisfactory restoration of the site to policy compliant end-uses. This is wholly reflective of a typical sand and gravel working restoration operation, as confirmed by the PGG on Minerals 2014, and as witnessed in countless other floodplain located sand and gravel workings in Oxfordshire and across other parts of England.

Simon Heaton, MRTPI
Mineral Planning Consultant
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