



## Minerals planning briefing:– need, sustainability and landbanks

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**A five year planning saga in relation to an aggregates proposal in Hampshire has recently concluded with the grant of permission. The result contains some interesting points for minerals developers.**

### The need for perseverance

New Milton Sand & Ballast ("NMSB"), a prominent aggregates operator in Hampshire, Bournemouth and Dorset, applied for 750,000 tonnes of sand and gravel extraction from land in the Green Belt at Downton Manor Farm, Milford-on-Sea, Hampshire in 2004. As can often be the case in minerals matters, NMSB has needed perseverance to ultimately achieve consent, despite an original officer recommendation of approval.

NMSB had been successful in challenging an earlier appeal refusal of the Downton application in the courts. This led to a re-opening of the appeal, with a partial re-hearing of the arguments, with planning permission granted by the Secretary of State on the recommendation of the inspector.

### Preserving positive findings of fact from the original inquiry

One of the interesting elements of both the inquiry and the decision letter relates to how the Inspector's Report from the earlier 2007 inquiry was dealt with. The first Inspector heard all the evidence and reached some very encouraging conclusions on the environmental impacts of the scheme. Although he went on to recommend refusal for reasons which were later quashed in the High Court action, there were scheme-positive conclusions on which NMSB hoped to rely in the re-heard inquiry, despite a different inspector being appointed for the re-hearing.

The most common position on re-hearings after a successful legal challenge is that the matter is re-heard in full, particularly where there is a new inspector. Objectors to schemes often argue aggressively for a full re-hearing, and the Planning Inspectorate often concedes the point to avoid the risk of a legal challenge on that issue.

Applying the case of *R (on the application of Martin Perrett) v The Secretary of State for Communities and Local Government and West Dorset District Council* 2009 EWHC 234 (Admin)

NMSB was successful in persuading the Inspector to rely on those scheme-positive conclusions so long as no other compelling evidence was brought to the contrary. This approach ensured the scope of the 2009 inquiry was restricted, thereby reducing the need for new expert environmental evidence at the inquiry, and attendant costs.

### The Inspector's treatment of need for aggregates

Also notable in the decision was the treatment of need. Mineral operators operate in a top-down managed regime with national need allocated amongst the regions and sub-allocated to the Mineral Planning Authority areas. If there is a shortfall in the relevant MPA's landbank then reserves within that area which are compliant with the Development Plan can come forward. If the landbank is full then this gives a respectable reason for rejection by the MPA.

Hampshire had identified not only a county-wide landbank but also 4 sub-county landbanks. The Inspector found that whilst the relevant sub-area had a sufficient (greater than 7 year landbank) the County as a whole was in deficit at just over 5 years. To resolve this dichotomy the Inspector went beyond the narrow landbank issue to look at paragraphs 71 and 72 of the Minerals Planning Statement 1 Practice Guide for the determination of applications and also those factors set out in the supporting paragraphs in the Core Strategy concerned with landbank assessment, namely national policy, recent trends in sand and gravel supply and in demand.

Against a background of recent data showing falling levels of aggregates production and demand the Inspector gave weight to the evidence of practical constraints on the availability of some consented reserves. This had the effect of reducing the actual landbank, together with evidence that long distance road haulage would increase if the appeal were dismissed, combined with the fact that the primary aggregate facilitated the recycling of secondary aggregate by NMSB. The Inspector had to weigh

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up the competing arguments on need and undertake a detailed balancing exercise. He considered that those elements which enhanced the overall sustainability of the development should be given material weight and concluded overall that there was a need for the appeal site.

Operators looking to submit planning applications and MPA decision makers should take careful note of this conclusion when the need for new reserves is not self evident. Sustainability factors, such as the facilitation of recycling of aggregates and the minimisation of road haulage, can make a

real difference in tilting the balance towards consent, as in this case. Extracting the maximum value from sustainability considerations, with credible evidence in support, needs to be part of shaping the consenting strategy from the beginning.

Burges Salmon acted for NMSB throughout.

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Disclaimer: This briefing gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

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