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Directorate for Planning and Environmental Appeals

Appeal Decision Notice

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The Scottish
Government

Decision by David Buylla, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-380-2021
- Site address: Overburns Farm, Lamington, Biggar, ML12 6HP
- Appeal by Patersons of Greenoakhill Ltd against the decision by South Lanarkshire Council
- Application for planning permission CL/11/0305 dated 1 July 2011 refused by notice dated 28 March 2012
- The development proposed: phased extraction of sand and gravel and establishment of associated plant site
- Date of inquiry and hearing sessions: 12, 13, 16 and 19 November 2012

Date of appeal decision: 9 January 2013

Decision

I dismiss the appeal and refuse planning permission.

Reasoning

1. Having regard to relevant provisions of the development plan, the main issues in this appeal are:

- whether there is a need for the proposal;
- the proposal's landscape impact;
- the proposal's visual impact;
- cumulative landscape and visual effects;
- impact on ecology and biodiversity;
- impact on the water environment;
- impact on prime quality agricultural land;
- implications for the amenities of neighbouring residents and the wider community;
- impact on the road network; and
- consequences for tourism and recreation.

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The site and proposal

2. The appeal site lies on the north side of the A702 trunk road about 11 kilometres from its junction with the M74. It extends to approximately 54 hectares, of which approximately 37 hectares would be used for the extraction of sand and gravel, six hectares for processing and plant and 1.5 hectares for the access road. The remaining 9.5 hectares would include a stand-off between the extraction area and nearby watercourses and an area of the A702 where road improvements are proposed.

3. There would be a 20 metre stand-off between the extraction area and Easterton Burn, which runs adjacent to the southern and eastern boundaries of the extraction area. The stand-off from the River Clyde would be equal to the river's width (between 25 and 30 metres). However, this might be increased if a proposed Adaptive Management Plan (AMP) indicated this was necessary.

4. Following an extraction period of approximately ten years, the site would be restored to a water body containing both deep and shallow water with features to improve biodiversity and encourage recreational use of the site.

The need for the proposal

5. The issue of whether there is a need for this proposal arises for two reasons. First, because national and local planning policy expects a minerals land bank to be maintained at all times at a level that equates to a minimum 10 years extraction and if it cannot be demonstrated that there is such a land bank then the need for a new mineral extraction proposal may be a significant factor in favour of granting planning permission. Secondly, because Policy MIN 2 of the South Lanarkshire Minerals Local Development Plan 2012 (the MLDP) requires an over-riding need to be demonstrated wherever a mineral development proposal would adversely affect a natural or built heritage site.

6. In order to determine whether there is a need for this proposal, a prediction must be made of the proposed quarry's likely mineral output and, taking into account predicted future demand for that mineral and the output from other sites producing the same mineral, a judgment must then be made as to whether existing quarries are likely to be able to satisfy demand for the mineral in the future or whether the level of need is sufficient to justify the proposal. In addressing this second issue, national and local policy requires that a timeframe of 10 years is considered.

7. In order to predict the appeal site's mineral output, the appellant has undertaken boreholes, trial pits and sample analysis. From this it is concluded that the site has a sand and gravel reserve, suitable for a range or aggregating and concreting uses, of approximately 3.3 million tonnes. This would be extracted at an annual rate of 300,000 to 400,000 tonnes. As no party has challenged these findings, I accept them as a suitable basis for considering the question of need.

8. Turning to the question of future demand, using evidence of recent past production rates the planning authority estimates that the annual market requirement from the South

Lanarkshire quarries is 1.335 million tonnes. The appellant contends that this figure is an underestimate and that, when the economy recovers from the current recession, an annual output of around 2 million tonnes is likely to be required in order to address market demand.

9. The authority based its figure on the views of Tarmac and CEMEX, who currently extract over 90% of the sand and gravel in South Lanarkshire and I consider this to be a reliable approach to identifying the recent demand for sand and gravel from South Lanarkshire quarries. These operators have not identified a significant slow-down in output due to the economic recession. This is perhaps due to some one-off projects of significant scale, such as works to the M74, which may have compensated for the slow down in other construction sectors. They predict an uplift in annual output of approximately 20% once the economy improves. This would increase the annual production / market requirement figure to about 1.6 million tonnes.

10. The appellant points out that it currently produces 400,000 tonnes of sand and gravel each year from quarries in Dumfries and Galloway and Stirling, a significant proportion of which is used within Glasgow and the Clyde Valley. When these quarries are exhausted, as is predicted to occur shortly, an alternative source will need to be found. This is likely to be in South Lanarkshire. As this will add a significant additional annual demand that has not been experienced in the past, I consider it reasonable to assume that the post-recession demand estimate of 1.6 million tonnes per annum is likely to be an underestimate.

11. South Lanarkshire is an important source of sand and gravel across the Glasgow city-region and beyond. The Glasgow and the Clyde Valley Strategic Development Plan (the SDP) seeks to achieve growth in the city-region's economy and in-migration. However at the same time it recognises that consented reserves of sand and gravels are constrained beyond the first ten year period of the plan's spatial development strategy into the longer-term, post-2021. A similar situation is seen in the nearby Edinburgh and the Lothians area. The proposed South East Scotland Strategic Development Plan (SESplan) has a similar focus on growth, but recognises (in the accompanying Minerals Technical Note) that in 2010, a greater quantity of sand and gravel was imported from elsewhere than was produced within the SESplan area. Given the location of South Lanarkshire in relation to the remainder of the Glasgow city-region and to the adjacent Edinburgh city-region, the potential for significant growth across the central belt and the confirmed shortage of alternative locations from which to extract sand and gravel, it is reasonable when considering the need for an additional sand and gravel quarry in South Lanarkshire to assume that in the future there will be greater demand on South Lanarkshire quarries than has been experienced in the past.

12. Taking into account all likely sources of demand for sand and gravel from South Lanarkshire quarries, I conclude that the appellant's post-recession estimate of two million tonnes per annum is reasonable.

13. Scottish Planning Policy (SPP) confirms that an adequate and steady supply of minerals is essential to support sustainable economic growth, and requires planning

authorities to ensure that a land bank of permitted reserves for construction aggregates of a minimum 10 years extraction is available at all times in all market areas.

14. SPP's requirement is reflected in Policy MIN 1 of the MLDP, which seeks to ensure an adequate and steady supply of minerals and to maintain a land bank for construction aggregates equivalent to at least 10 years extraction. Paragraph 2.6 of the MLDP confirms that the aim of Policy MIN 1 is to ensure that a supply of minerals continues to be available to serve local, national and international markets.

15. As there is no evidence from which to conclude that there will be an immediate upturn in construction activity, the identification of an annual post-recession demand for two million tonnes of sand and gravel should not translate into a requirement for 20 million tonnes over the next 10 years. It is impossible to predict when demand will increase from the current 1.335 million tonnes per annum level but, for the purpose of this exercise, I consider it reasonable to assume that it will occur within the next few years and that an estimated requirement of 17 million tonnes over the next ten years would be a reasonable basis on which to proceed.

16. The extent of the sand and gravel land bank for South Lanarkshire was considered in site-specific detail last year, in the examination of the MLDP. The planning authority calculated at that time that there was a reserve of 14.25 million tonnes. The base date for these calculations is unclear but is presumably shortly before the MLDP hearing late last year. Such figures are therefore about 12 months out of date and in the authority's statement for this appeal (dated July 2012) an updated reserve was calculated. This accounted for the reduction in the reserve since the MLDP hearing due to ongoing extraction works, and reflected two recent permissions for extensions to existing quarries with a total additional reserve of 250,000 tonnes. The reserve calculated by the authority in July 2012 was 13.245 million tonnes. Even if there were no growth in demand over the next 10 years, which I do not consider to be a reasonable assumption, this would fall slightly short of a 10 year supply, based on the authority's own annual demand figure of 1.335 million tonnes.

17. The appellant contends that the authority's appeal statement figures do not reflect the stated intentions of the operators of the existing South Lanarkshire quarries. In its submission to the MLDP hearing, the operator of the Hyndford quarry (CEMEX) stated that the reserve at that site was 3.8 million tonnes rather than the authority's predicted output of 4.4 million tonnes. This correction to the authority's figures would reduce the extent of the reserve by 600,000 tonnes. In regard to the permitted reserve at Westend Wood, CEMEX also stated that it intended to extract only 40,000 tonnes per annum. The authority's calculations assume that the entire 1.3 million tonnes reserve would be available over the next 10 years. I appreciate that CEMEX could decide to increase the annual rate of production in response to an increase in demand. If it did then the planning authority's prediction of the ten year output from this quarry might be realistic. However, one cannot assume that the rate of extraction would or could be increased in this way. Therefore, from the evidence that is before me I agree that the output from this quarry over the next ten years should be reduced to 400,000 tonnes to reflect the rate at which the site operator is willing/able to extract the mineral, rather than the extent of the overall reserve.

18. The effect of making these changes is to reduce the authority's identified reserve from 13.245 million tonnes to 11.745 million tonnes. A further reduction would also need to be made to take account of the output from the existing quarries during the five months or so since those figures were calculated. This would be in the order of 500,000 tonnes, bringing the extent of the reserve down to approximately 11.245 million tonnes.

19. Since the authority prepared its appeal statement, planning permission has been granted for another quarry at Garvald, which has a reserve of 4.9 million tonnes. If all of this reserve were added to the adjusted reserve for the other six quarries, the resultant sand and gravel land bank would amount to approximately 16.145 million tonnes.

20. The appellant has expressed concern at the authority's decision to grant permission at Garvald due to the age of the environmental information on which the authority's resolution to grant was based. However, the permission has not been challenged so it must be regarded as valid.

21. It is significant however that the owner of Garvald Quarry (Tarmac) has confirmed that it has no intention to operate the new quarry until its operations at another site (Newbigging) are complete. When it wrote to the planning authority in September last year it predicted that this would not be for another 15 years. Garvald is therefore unlikely to start contributing to the supply of sand and gravel until well beyond the next 10 years. In contrast, the appellant intends to make an early start on extraction from the appeal site and this could be secured by planning condition. Therefore, I agree with the appellant that the recently issued permission at Garvald should not be included when considering the adequacy of supply over the next ten years and the extent of the permitted reserve should remain at approximately 11.245 million tonnes.

22. The planning authority contends that a potential reserve at The White Loch and West End Wood should be added to the permitted reserve, as the authority has resolved to grant planning permission on that site. This would add 1.2 million tonnes to the reserve. The appellant contends that is inappropriate in principle to include sites that do not yet have planning permission (where there is merely a resolution to grant permission) as such potential reserves might never actually be delivered and are not 'permitted reserves' as are referred to in SPP.

23. While SPP refers to 'permitted reserves', I agree with the authority that one cannot entirely ignore sites where the authority has resolved to grant permission, as issuing permission for such sites may be a mere formality. However, even if one adds the reserve at The White Loch and West End Wood to the adjusted figures for the permitted quarries, the total sand and gravel land bank that can be expected to be delivered within the next ten years would be 12.945 million tonnes, which is short of the level needed to support even current levels of production and well short of the level that is likely to be needed to support the demands of a revived construction industry.

24. Taking all of the evidence into account, I conclude that in order to maintain a 10 year land bank for sand and gravel in accordance with SPP and the development plan, there is a

need for additional mineral extraction capacity, with which this proposal would assist. This is an important consideration in favour of allowing this appeal, which I have taken into account when considering the benefits and disbenefits of the scheme.

25. I confirm later in this notice that the proposal would have significant adverse effects on certain important natural heritage sites. In such circumstances, MLDP Policy MIN 2 requires it to be demonstrated that there is an over-riding need for the minerals to serve appropriate markets. Where the proposal would affect a site that is identified in Category 2 of Table 3.1 in the MLDP, the market to be served must be of national importance, whereas for Category 3 sites it needs to be of only regional or local importance.

26. Category 2 sites include scheduled monuments, category A listed buildings, sites of special scientific interest (SSSI) and Prime Agricultural Land. There are two category A listed buildings within two kilometres of the site and four scheduled monuments. However, the parties agree that the proposal would have no adverse impact on these features. The nearest edge of the Tinto Hills SSSI is about 1.7 kilometres away but again (as I set out in greater detail, later in this notice) the parties agree that there would be no adverse effect. The most recent Land Capability for Agriculture (LCA) map categorises the land at Overburns within Class 3 Division 1, which is within the definition of Prime Agricultural Land. However, as I confirm later in this notice, the tendency for this site to flood means that, notwithstanding its classification as Prime Agricultural Land, it would not be appropriate to regard the site's agricultural quality as of national importance. I conclude therefore that the proposal would not adversely affect any Category 2 sites and that it is unnecessary for the appellant to demonstrate that the need for the proposal is of national importance.

27. Category 3 sites include category B and C listed buildings and Special Landscape Areas (SLAs). There are several category B and C listed buildings within two kilometres of the site but the parties agree that the special interest of these would not be adversely affected to any significant degree. The site lies within the Upper Clyde Valley and Tinto SLA and, as I set out in more detail later in this notice, following mitigation the proposal would have a significant adverse effect upon the landscape character of the SLA. It is therefore necessary for the appellant to demonstrate that there is a need for the mineral that the site would produce, and that this need is of local or regional importance.

28. Given the conclusion I have set out above that there is not a demonstrated 10 year land bank of permitted reserves for construction aggregates, and the importance of South Lanarkshire sand and gravel quarries in supplying the entire central belt, I am satisfied that the requirement of Policy MIN 2 to demonstrate an over-riding local or regional need for the mineral has been demonstrated. I have addressed other requirements of this policy, which relate to the adequacy of mitigation, later in this notice.

Landscape and visual impact

29. The appellant's landscape and visual evidence has evolved over the course of this appeal. The planning application that led to this appeal was accompanied by environmental information in the form of an Environmental Statement (ES) and a

Supplementary Statement with Environmental Information. These dealt with, among other things, landscape and visual issues. Both documents were publicised in accordance with the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 (the EIA Regulations). The appellant supplemented this information with an appendix to its appeal statement entitled Appendix C "Review of Landscape Evidence" and an "Assessment of Potential Visual Effects Upon Residential Receptors". These two documents also dealt with landscape and visual impact issues. In the case of Appendix C it re-examined the landscape and visual impact analysis and arrived at a number of different conclusions (although the ultimate conclusion that the development would not cause unacceptable landscape or visual impact remained consistent). In the case of the residential receptor analysis it considered the issue of visual impact in greater detail than was contained in either the Environmental Statement or the Supplementary Statement with Environmental Information. Neither of these additional documents has been advertised under the EIA Regulations. However, they were publicised under the Town and Country Planning (Appeals) (Scotland) Regulations 2008 (the Appeals Regulations), which gave interested parties the opportunity to respond.

30. The planning authority and the Clyde River Action Group (CRAG) object to my consideration of this additional landscape and visual evidence on grounds that it conflicts with the publicity requirements of the EIA Regulations, the Town and Country Planning (Appeals) (Scotland) Regulations 2008 (the Appeals Regulations), and section 47A of the Town and Country Planning (Scotland) Act 1997 (the Act).

31. In my assessment of the appeal which follows, I have considered the original landscape and visual evidence in the ES and Supplementary Statement with Environmental Information and have concluded that the proposal would have significant adverse landscape and visual effects and that, taking all positive and negative aspects of the proposal into account, these justify refusal of the appeal. I have also considered the appellant's additional evidence and this has not changed my conclusions on the landscape and visual issues or my overall conclusions. Therefore, whether the additional landscape and visual evidence had been excluded from consideration or had been given additional publicity, this would not have affected my conclusions on landscape and visual impact or my decision on this appeal.

32. As parties have had the opportunity to respond to the additional information, there is no breach of the Appeals Regulations and as the information did not raise matters that were not before the planning authority, there is also no conflict with section 47A of the Act.

Landscape impact

33. I have considered impacts on landscape character, landscape fabric and on designated landscapes, including effects on the site and on the wider locality. In my assessments I have separately considered the proposal's effects during the period of site operations and post-restoration.

34. Most of the appeal site, including all of the extraction area and plant site, lies within the Broad Valley Upland landscape character type (LCT), as defined in SNH's Glasgow and

Clyde Valley Landscape Character Assessment 1999 (the LCA). The site entrance and a short section of the access road lies within the Southern Uplands LCT. I have considered the effects on the character of these landscapes before looking at effects on other landscapes nearby.

35. The key characteristics of the Broad Valley Upland landscape are its large scale, comprising a broad, flat bottomed valley enclosed by rounded foothills, its distinctive pattern of tree cover comprising shelterbelts on lower slopes and lines of mature trees on field boundaries and the scattered pattern of rural settlement. The appellant accepts that the site lies within a predominantly rural area but points out that within the valley there are man-made features such as the former Lamington Quarry within the course of the river, several settlements, modern farm buildings, main roads and a mainline railway. I agree that the valley has a settled landscape character and that man-made features form part of the landscape character baseline, against which the impact of the proposed development must be assessed. Given these features and the relatively large scale of the landscape, I also agree with the appellant's assessment that this landscape has a medium sensitivity to the type of development proposed.

36. The LCA discourages large scale mineral workings within the Broad Valley Upland LCT, particularly where they would be seen from important viewpoints. This statement is material to my consideration of the appeal proposal but is no substitute for a site and proposal specific assessment of its likely landscape and visual effects.

37. The appellant predicts that the replacement of large areas of pasture with open water, in combination with the built elements of the plant site, machinery and vehicles, would introduce a substantial change to the character of the Broad Valley Upland landscape during the period of operations. It is argued however that, taking into account the non-permanent nature of the operational phase and the proposed mitigation measures, the overall magnitude of change would be reduced to moderate/substantial.

38. As the proposed working period would be in the order of 10 years, I do not accept that the temporary nature of extraction operations significantly reduces the magnitude of landscape change, although I accept that it is a relevant consideration when considering whether any harm arising during the operational period would be outweighed by positive aspects of the scheme in the short and longer term.

39. Turning to the proposed mitigation, the appellant refers to the extraction point and silt pond being covered with open water and therefore not being an obvious quarry site. I agree that the nature of the landscape effects during wet-working operations would be less harmful than from a dry-worked quarry of a similar scale. However, I do not agree that this would materially reduce the magnitude of landscape change, as it would lead to the creation of water bodies which the appellant accepts would represent a substantial change from the existing predominant pasture. Therefore, I do not regard the wet working method as having any mitigating effect on the magnitude of landscape change.

40. The appellant also refers to the mitigating effect of the phasing of extraction works, which would allow areas of the site to remain as grazing land until extraction from that part

of the site was ready to commence, I agree that leaving unworked areas of the site would help to mitigate the landscape impact of on-going extraction. However, this mitigating effect would clearly diminish over time, as more of the site was worked.

41. Overall, I conclude that during the operational period, the proposal would create a substantial change to the character of the Broad Valley Upland landscape.

42. Using the significance matrix in the Guidelines for Landscape and Visual Impact Assessment 2002 (the GLVIA), which all parties agree is appropriate, a substantial change in a medium sensitivity landscape would result in major/moderate (and significant) landscape effect.

43. The appellant contends that the nature of these effects would be largely neutral but with some adverse elements (primarily the plant site, plant movements and the access road). I agree that the areas of stored materials, plant and equipment would be adverse in nature. However, I also regard the effect of the emerging water bodies as adverse.

44. As I have set out in more detail below in my consideration of post-restoration effects, I do not consider that the proposed water-bodies even after restoration would have an acceptable landscape impact. And during the operational period, the proposed softening measures that the appellant proposes to undertake, such as reed planting and the construction of promontories into the water bodies to break up their outline, would be in the early stages of establishment. During the operational period, the gradually enlarging water bodies would have an incongruous and man-made appearance due particularly to the straight edge along the south western side of the phase 1 water body, which has a near 90 degree corner at its southern end and the fact that the northern edge of the water bodies would closely track the course of the river in a way that would not appear natural. I do not consider that these issues could be addressed by planning conditions requiring amendments to the form of the emerging lochans as this would require very significant changes to the extent of the extraction area and the way in which it could be worked.

45. It was suggested by CRAG and some other opponents of the scheme that the water in the emerging water bodies would have a muddy appearance, not only around the point of mineral extraction but also in the southern water body where it is proposed to deposit silt. If this were the case then this would add to the inappropriate and unnatural appearance of the emerging water bodies. However, the appellant refutes this with reference to its proposed method of working, and as I have no technical evidence to undermine the appellant's position, I have assumed, in reaching my conclusions, that that this will not materially worsen the impact.

46. I have had regard to the location of the site on a floodplain. CRAG's witness at the inquiry session into landscape and visual impact issues, who is a local resident, estimated that the valley is significantly flooded on approximately five occasions each year but that flood water rapidly abates. From this it is clear that although expanses of flood water across the valley floor are not uncommon, they represent infrequent and short-lived changes to its established pastoral character. And in any event, I do not regard the

landscape character effects of the emerging water bodies during the operational period to be comparable to natural flooding of the valley, due to their clearly man-made appearance.

47. I do not agree that the emerging water bodies would have a similar appearance to the former Lamington Quarry, which has the appearance of a wide pool of slow moving water within the river itself. And in any event, while Lamington Quarry forms part of the landscape baseline, it is not a neutral landscape feature (it having a slight negative impact on landscape character). Therefore I do not accept the appellant's argument that, having regard to the presence of Lamington Quarry, the provision of additional water bodies would result in a neutral landscape effect.

48. I conclude therefore that, during the operational phase, the proposal would have significant adverse effects on the character of the Broad Valley Upland landscape.

49. Turning to the Southern Uplands LCT, this covers the upland areas to the south of the Clyde valley but also overlaps the site access onto the A702 and a short section of the access road. At this point, the character of the LCT is very different to that of its upland core, and the trunk road, much greater tree coverage and shortening of views due to the landform significantly reduce its sensitivity. I agree with the appellant that in the part of the LCT that includes the site entrance and access, the sensitivity to this type of development would be medium. The proposal would necessitate the removal of some mature roadside trees and the provision of substantial visibility splays to either side of a 7.3 metre wide access road carrying regular HGV movements. However, in the context of the busy A702 which is the dominant landscape feature in this part of the LCT, this would only represent a moderate change to the character of this part of the LCT and a consequent moderate, insignificant and neutral landscape character effect.

50. Turning to the wider landscape context for the site, I agree with the appellant's assessment that during the operational period there would be no significant landscape effects on the Upland Glen and Upland Valley with Pastoral Floor LCTs.

51. In the Supplementary Statement with Environmental Information, the appellant concluded that during the operational period there would be major/moderate adverse landscape effects on the south-eastern flanks and summit of Tinto Hill which is within the Foothills LCT and moderate adverse effects elsewhere within that LCT. It also concluded that there would be localised moderate or major/moderate effects during the operational period on some of the hills within the Southern Uplands LCT and moderate/minor or minor adverse effects on the Southern Uplands with Scattered Forest LCT. The appellant did not depart from these conclusions in subsequent landscape evidence and, given the high sensitivity of these upland landscapes (being open, undeveloped upland areas) and the visibility of the proposed quarry from them, I agree that during site operations, there would be significant adverse landscape effects on parts of these three LCTs.

52. Turning to the post-restoration landscape effects, the appellant proposes to create shallow and deep water bodies in the excavated void, with tree and shrub planting to soften the visual impact and enhance biodiversity and recreation potential. The edges of the restored water bodies (which would essentially be a single body with shallows at the

northern and southern ends and a deep water central area) would be softened by creating outcrops or promontories from overburden and unused mineral in an attempt to give the edges a more natural appearance. The shallows would be planted with reeds to provide further visual and biodiversity benefits.

53. In the Supplementary Statement with Environmental Information the appellant concludes that following the cessation of extraction works (and the consequent removal from the site of the associated plant and equipment) and the completion of the restoration scheme, there would be major/moderate (that is, significant) but neutral effects on the character of the Broad Valley Upland LCT. These conclusions are maintained in the appellant's later evidence. The appellant relies upon the view that the water body and planted areas would be of a similar scale and character to elements already found in the locality of the appeal site.

54. The planning authority and CRAG agree that there would be significant post-restoration landscape effects but contend that the nature of these would be adverse rather than neutral, as the scale and form of the resultant water body and the location of the proposed planting would be incongruous. SNH also remain concerned over the form of the landscape after restoration is complete, with particular concern expressed over what it describes as the engineered form of the proposed water body.

55. Linear planting strips are not uncommon in this LCT and although most are away from the floodplain on the lower slopes of the surrounding hills, there are some areas of floodplain and riverside planting both upstream and downstream of the site, which do not detract from the character of the valley landscape. CRAG contends that these other examples reflect specific attempts to manage views from important local houses but I don't regard the original justification for their existence to be relevant to an assessment of the appropriateness of further floodplain planting. The overall extent of planting would be limited when compared with the size of the floodplain and I am satisfied it would have a neutral landscape character effect.

56. I am not satisfied however, that the restored form of the proposed water body would have a neutral landscape effect. It would be of very significant scale, larger than the former Lamington Quarry. However, I do not share the authority's view that the proposed balance of pasture to water in the valley would become, in principle, unacceptable following the creation of the proposed water body, as it would remain dominated by pasture land. My concern is with the shape of the proposed water body and its position in relation to the river, although its size is a contributor to its landscape harm because it increases the significance of the harm and lessens the effectiveness of the appellant's attempts to mitigate its engineered form.

57. In order to maximise the productivity of the site, the appellant proposes to align the western end of the extraction area (and therefore the proposed water body) with the adjacent site boundary. As this boundary follows essentially a straight line perpendicular to the river, the restored water also takes on a very linear form at this end, and as there is no significant ground level change at this point, merely an ownership boundary, this linearity

looks entirely artificial and engineered. This effect would be worsened rather than mitigated by the proposed linear shrub planting and footpath.

58. The proposed water body would also have a 90 degree corner at its south western end, which again would appear entirely unnatural. It would then follow an essentially straight line for much of its southern boundary. While there is some topographical logic to that linearity for a section of the southern boundary, where the land rises steeply to form White Hill, for the remainder (where the adjoining land is flat) the essentially straight edge would appear unnatural.

59. The northern edge of the proposed water body is proposed to follow the southern bank of the river. Subject to any adjustment needed to maintain this integrity of the stand-off area, which would be dealt with through an AMP (discussed later in this notice), the width of this stand-off would reflect the width of the adjacent river. As this is fairly consistent, the width of the stand-off would be similarly consistent. I regard the consistent form of this linear stand-off to be a further example of an incongruous, man-made and harmful element of the proposal. However, subject to the carrying out of extensive tree planting within the area, the degree of harm would be reduced, as the close mirroring of the southern bank of the river by the northern edge of the water body would be less apparent.

60. I have considered very carefully the measures the appellant has proposed to soften the edges of the proposed water body. However, I conclude that the proposed softening works would not significantly alter the appearance of what would be a very large engineered water body. I appreciate that in some places, the appellant would create promontories of up to 80 metres in length. But in relation to the scale of the water body and the clearly linear basis on which its western edge in particular has been planned, even proposals of this scale would not succeed in mitigating the adverse landscape effects of introducing such a large and clearly man-made element into a rural landscape.

61. For the reasons I have set out later in this notice when considering visual impact, I am also not convinced that the proposed reed planting would significantly mitigate the man-made form of the water body.

62. Turning to the post-restoration effects on the Foothills and Southern Uplands LCTs, the appellant accepted in the Supplementary Statement with Environmental Information that there would be moderate (non-significant) adverse effects on the south-eastern flanks and summit of Tinto Hill, within the Foothills LCT and moderate or moderate /minor (non-significant) adverse effects on some of the hills within the Southern Uplands LCT. In later evidence the appellant amended its position to recognise that post-restoration effects would remain significant (due to the size of the proposed water body) but would be neutral rather than adverse in nature, being similar in scale and character to the open water already seen on the Clyde. For the reasons I have already given I conclude that the post-restoration effects on these landscapes would remain significant and would be adverse in nature.

63. There has been a more recent classification of the landscape around the appeal site than the 1999 SNH LCA. This is set out in the Landscape Character Assessment for South Lanarkshire 2009. It breaks the landscape down into smaller sub-types but does not

materially depart from the earlier LCA in its assessment of the established character and sensitivity of the surrounding landscapes. Consequently, it does not affect the conclusions I have set out above.

64. In conclusion, I find that the proposal would have a significant adverse effect on the landscape character of this part of the Clyde Valley and some of the surrounding upland areas, both during extraction operations and following restoration.

65. With regard to the proposal's effect on the physical fabric of the landscape rather than its character, there would be significant change within the site from pasture land to open water. For the shallow water areas, this, together with the associated planting works would provide some improvements to the site's biodiversity value and recreational interest. These are positive aspects of the scheme which I have discussed later in this notice. However, this is not at present a degraded landscape. The fabric of the site and wider valley landscape is already in a good state and, setting the aside the biodiversity and recreational benefits, it would not be materially improved (merely altered) by the proposed restoration scheme. I find therefore, the proposal's effect on landscape fabric to be neutral in nature.

66. Policy ENV 4 of the South Lanarkshire Local Plan (2009) (the local plan) seeks to protect the natural and built environment in two ways. First it requires an assessment of all development proposals in terms of their effect on the character and amenity of the natural and built environment in accordance with national natural heritage policy in NPPG 14, which has now been replaced by Scottish Planning Policy (SPP). Secondly, it offers specific protection to a hierarchy of designated natural and built heritage sites.

67. National natural heritage policy in SPP requires planning authorities to take a broader approach to landscape and natural heritage than just conserving designated or protected sites. It repeats the European Landscape Convention's recognition that all landscapes require consideration and care. It aims to facilitate positive change whilst ensuring that distinctive character is maintained and enhanced. It recognises that different landscapes will have a different capacity to accommodate new development and that the siting and design of development should be informed by local landscape character.

68. For the reasons I have set out above, I find that the proposal would not respect local landscape character and would significantly adversely affect that character both during operations and following restoration. It would not therefore meet the expectations of SPP and would consequently fail to meet the first requirement of Policy ENV 4.

69. There are no statutorily designated landscapes in the locality of the appeal site. However, the site and most of the surrounding land is within the Upper Clyde Valley and Tinto SLA and was formerly included within the South Clydesdale Regional Scenic Area (RSA), both of which are local landscape designations. SLAs are referred to in the MLDP, whereas the local plan, as it pre-dated the recent local landscape designations review which identified the SLAs, refers to the earlier RSAs. However, as both RSA and SLA designations occupy the same place in the designation hierarchy, it is reasonable, in

considering this appeal, to apply those local plan policies which refer to the now superseded RSA designation as well as the MLDP policies that refer to SLAs.

70. Policy ENV 4 only permits development within local and regional designations where the integrity of the resource will not be significantly undermined. Policy ENV 29 of the local plan sets out the test to be applied for RSAs and Areas of Great Landscape Value, which like SLAs denote landscapes of local or regional significance. This requires development not to adversely affect the overall quality of the designated landscape area.

71. I agree with the appellant that the aim of Policy ENV 29 and the second aspect of Policy ENV 4 is to ensure that development proposals do not undermine the integrity and overall quality of the designated landscape as a whole, rather than to protect individual sub-areas or key characteristics within the designated area. The Upper Clyde Valley and Tinto SLA is a designation that covers a significant land area, from many parts of which the appeal proposal would be entirely screened. Therefore, despite its adverse landscape and visual impacts (which I have discussed above), the proposal would not harm the integrity of the SLA or its overall quality and would therefore comply with these aspects of development plan policy. The conflict with the first requirement of Policy ENV 4 would however remain.

72. Paragraph 3.12 of the MLDP recognises that SLA designation will not automatically preclude mineral development, but will require greater consideration and weight given to the impact on landscape at the decision making stage. This is consistent with paragraph 5.34 in volume 2 of the local plan. However in Policy MIN 2, the MLDP takes a different and stricter approach to protecting SLAs and other designations of regional or local importance to that set out in the local plan. There is no reference in Policy MIN 2 to effects on the integrity or overall quality of local / regional designations. Instead, the policy requires development which would adversely affect the SLA to comply with certain criteria. I regard this as a stricter policy test than in the local plan because it employs a lower impact threshold.

73. For the reasons I have set out above, I conclude that the proposal would cause significant landscape harm which would adversely affect the SLA. This triggers the three criteria in Policy MIN 2. And contrary to the second of these, I conclude that the proposal would have a significant adverse impact which cannot, on the evidence that is before me, be mitigated to an acceptable degree. The proposal is therefore contrary to this requirement of Policy MIN 2.

74. I conclude therefore that the proposal would satisfy those requirements of the local plan that relate to the protection of the SLA as these would only be breached a development that undermined the integrity or overall quality of this extensive area. However, it would not satisfy the requirement of local plan Policy ENV 4 or SPP in terms of its effect on the character and amenity of the landscape and would also fail to satisfy the requirements of MLDP Policy MIN 2, which is the most up to date expression of development plan policy and is a minerals-specific plan, due to the harm it would cause to the SLA as a result of more localised landscape and effects, which could not be adequately mitigated.

75. MLDP Policy MIN 4 requires restoration proposals to take account of the specific characteristics of the site and its locality and to restore and/or enhance the landscape character of the area. It also states that any opportunities for enhancing biodiversity, community recreation and access should be considered. This policy therefore distinguishes between landscape character protection and issues such as biodiversity and recreation improvements that might be secured.

76. I do not agree with the interpretation of the authority's witness at the inquiry session that 'restoration' in this context necessarily means reversion to the previous landscape form (in this case pasture land) rather than an approach that changed the landscape character but did not harm it. Such an approach would be out of step with SPP, which recognises that, in order to secure environmental improvement, the best restoration approach may not be to restore land to its former condition. Nevertheless, as the restoration proposals would not take account of what is appropriate to this locality and would fail to restore or enhance landscape character, the proposal is contrary to Policy MIN 4. As I discuss later in this notice, there would be some improvements to the site's biodiversity and recreation interest. These positive factors must be taken into account in my overall assessment. However, they are separate and secondary considerations in this policy and do not alter the requirement to restore or enhance landscape character, which the proposal does not achieve.

77. I conclude that the proposal would have significant adverse effects for the landscape character in and around the appeal site, many of which would remain following restoration. As a result of this landscape character harm I find the proposal to be contrary to a number of provisions of the development plan. This has considerable significance for my overall assessment of the proposal. And as the post-restoration effects would be permanent they carry significant weight in my assessment of whether the proposal's benefits outweigh the conflict with the development plan and the harm it would cause.

Visual impact

78. The appellant considered the impact of the proposed development using nineteen viewpoints, which were selected to give a broad representation of how the proposal would be seen from the surrounding area. These were agreed with SNH and I agree that they provide a reasonable representation of how the site would be seen. CRAG looked at some additional, primarily residential, receptors, which I have also considered.

79. I have considered the proposal's effect during the operational phase for each affected viewpoint before repeating the process to assess post-restoration visual effects. Where parties are agreed that there would be no significant effects on a particular viewpoint and I concur, I have not addressed it in this notice.

80. Viewpoint 6 at Symington Lodge is on an access track approximately one kilometre to the north-east of the site at an elevation approximately seven metres above the level of the extraction area. Receptors at this location are likely to be walkers and horse riders, which all parties agree gives it a high sensitivity to this form of development. However, due to the distance from the site and particularly to the shallow angle of view, I agree with the

appellant that there would be little change to the view and only slight effects on visual amenity.

81. Viewpoint 7 is close to the top of Castle Hill, approximately 700 metres to the north-west of the site and about 57 metres above the level of the extraction area. Walkers and visitors to the castle earthworks would be highly sensitive receptors and the application site would occupy a significant proportion of the view, leading to a moderate magnitude change. I agree with the authority that the resultant major/moderate (and significant) impact on this viewpoint would be adverse in nature because the on-going extraction operations, including for the first two years or so, regular lorry movements to and from the extraction site, would be incongruous and harmful elements in the view. This impact should however become neutral in nature towards the later stages of the operational period, once the proposed planting along the stand-off area had matured, as this would successfully screen much of the site from this viewpoint.

82. From high level routes across the Tinto Hills to the north west of the site (viewpoints 9 and 9A) there would be uninterrupted views of the proposed development from a distance of four kilometres and an elevation of about 508 metres above the level of the extraction area. The routes (which include core paths 3469, 3470 and 3471) are very popular with access takers and the appellant accepts that Tinto Hill provides a regionally important vantage point. The appellant contends that there would be a moderate magnitude of change on this highly sensitive viewpoint, due to the distance from the site, which reduces the impact of smaller features in the site such as plant and machinery, and because the affected proportion of the panoramic view that is available would be relatively limited.

83. However, I agree with the planning authority and CRAG that the effects would be major /moderate (that is, significant) because from these elevated viewpoints, the entire extent of the site would be visible. While the extraction equipment is unlikely from this distance to appear noticeably different to agricultural machinery that one can already see within the valley, the emerging water bodies, the plant site and access road would all introduce significant changes to the established view. I conclude that the nature of this significant effect would be adverse because the changes would not sit comfortably within the valley landscape. The emerging water bodies would be especially harmful, as their engineered appearance would be clearly apparent from these viewpoints. The appellant's landscape witness accepted at the inquiry session that proposed edge softening measures such as the proposed promontories would not be effective at this range.

84. I accept that panoramic views are available from Scout and Tinto Hills but this does not significantly diminish the significance of the proposal's harmful effects, because, due to the framing effect of flanking hills, the view down into the Clyde Valley forms a distinct focal point and a view that one considers separately from other available views. I regard the view down into the valley as one of the most important, as it gives a very satisfying impression of the elevated nature of the viewing point. When I visited these summits I noted numerous other visitors moving over the shoulder of the hills in a southerly direction in order to obtain this view.

85. Viewpoint 11 is from the access road to the adjacent farm complex, Langholm. This is at a distance of about 500 metres from the site and an elevation approximately seven metres above the extraction area. CRAG advises that this road is used by walkers, who are high sensitivity receptors. However, I do not regard it as such an obviously attractive walking route that its sensitivity should be higher than the moderate level afforded by the appellant. There would be no view of the extraction site from this location and the principal impact would be from HGVs using the site access road. I agree with the appellant that this would create only a slight change to the view and that the resultant effect would not be significant.

86. CRAG's landscape expert looked at the proposal's visual impact on two nearby viewpoints at Langholm Farm (viewpoint MSC 2A) and Langholm Bungalow (viewpoints MSC 2B and MSC 2C). The sensitivity of these is high, as they are residential properties.

87. From viewpoint MSC 2A the plant site, access road and the first phase of the extraction area would be seen from a distance of about 700 metres. The shape of the emerging water bodies would not be discernible due to the shallow angle of view. From this distance, the plant and machinery would not be significantly more visually intrusive than farm machinery and the screening bunds around the plant site, although of significant size, would be difficult to detect. HGVs using the access road would have more of an impact but overall would create only a slight change to the view and an insignificant visual effect. The occupants of this property farm the land that abuts the site. From parts of their land, the impact of the proposals would be very much more significant. However, because the significance of the effect would reduce greatly when they returned home, I do not accept CRAG's argument that these residents would experience a continuous adverse effect.

88. From viewpoints MSC 2B and MSC 2C there would be views of the site access road (about 500 metres away) and (from MSC 2B) the plant site (about 700 metres away). The screening bunds around the plant site would not be visually intrusive from this distance and would screen the machinery and structures within it sufficiently well for it to be no more visually intrusive than a typical farm yard. From viewpoint MSC 2C the first 700 metres of the access road would be visible and HGVs using the entire length of the road would also be seen. From these viewpoints, traffic on the busy A702 can also be seen. Although this is about 1200 metres away it provides a backdrop of busy vehicle movement, in the foreground of which the relatively lightly used access road would not represent a significantly harmful visual effect.

89. Viewpoint 13 is on the A702, close to the proposed site access. Road users would have a range of sensitivity (from tourists who have chosen to take this designated tourist route in order to appreciate the views, to HGV and other professional drivers who would be less sensitive to visual change). However, there are also residential receptors at Overburns Cottages, about 100 metres from the access road and opposite the northern visibility splay, who would have high sensitivity. I therefore regard the overall sensitivity of this viewpoint as high. The appellant contends that viewpoint 13 is not representative of the view from Overburns Cottages but, having viewed the site of the proposed access from those properties, I am satisfied that the proposal's effect would be no less significant. The visual impact of the access road, which would be urbanising in nature, and of the associated

landscape planting, which would in time obstruct or interfere with a fine view of Tinto, would be substantial in magnitude, being dominant within this view and seen from close range, This would lead to a significant adverse effect. My concern is principally with residents of Overburns Cottages, as for users of the A702, there are other views of Tinto available and, once past the visibility spays in either direction, the effect on the A702 would cease to exist.

90. Viewpoint 14 on Lamington Hill is about 1.5 kilometres to the south of the site at an elevation around 287 metres above the extraction area. Almost all of the site can be clearly seen from this point in the middle distance. This summit and others nearby such as Overburns Hill and Turkey Hill are used by walkers and its sensitivity is therefore high. The presence of traffic on the A702 can be clearly detected from this point, and several farmsteads can be seen across the valley floor. I do not consider therefore that the proposed plant, machinery and access road would create more than a slight change to the view. In contrast, the emerging water bodies would occupy a significant proportion of the middle distance view and would create a major/moderate (significant) effect. Their man-made form would be readily apparent from this viewpoint. As such the nature of this effect would be adverse.

91. Viewpoint 18 is from a field track on the south-east site boundary. This is adjacent to the extraction area and the parties agree that there would be a substantial change to the view. The appellant assesses the sensitivity as medium but recognises that the track may be used by walkers to access the river. Although it is not directly connected to the Core Path network and does not afford the same panoramic views as some of the higher level routes in the locality, this track is likely to be used recreationally by local people, particularly Coulter residents for whom it could form part of a circular route. Therefore I conclude its sensitivity is high. The view from this point would be dominated by the on-going operations, which at such close proximity, would significantly detract from visual amenity. The effect on this viewpoint would therefore be significant and adverse.

92. Viewpoint 19 is on the riverbank to the east of Lamington Quarry, approximately 300 metres to the west of the site at an elevation approximately two metres above the extraction area. The appellant accepts that this is a high sensitivity viewpoint because it represents a view from river users such as canoeists, anglers and walkers. CRAG's landscape expert analysed a similar view (MSC 3C) from within the river itself. Because of the low lying elevation of these views, the magnitude of change upon this viewpoint would be only moderate, despite the close proximity to the site. But given the high sensitivity of the receptor, this represents a significant visual effect, the nature of which would be adverse due to the visibility of taller examples of the machinery such as the excavator, within close range. However, once riverbank landscape planting had reached a sufficient size to provide an effective screen (which the appellant estimates would take five years) the nature of the effect would become neutral as the view would be of trees.

93. CRAG's landscape expert assessed the view from the railway line (viewpoint MSC 3A) and concluded that there would be significant adverse effects during operation. I viewed the site from the train and conclude that the harmful effect would be appreciated for such a short period of time, given the speed of trains at this point, that it would not detract from the experience of train occupants to any objectionable degree.

94. CRAG looked at the effect on the view from two houses at Broadfield Farm (viewpoint MSC 3B), which is situated to the north west across the river. The rear of these properties faces the site and they are elevated about 20 metres above the level of the extraction area. There would be a view of the access road and plant site from a distance of about a kilometre. The nearest corner of the extraction area would be about half that distance away but would be screened from view. I am satisfied that there would not be a significant visual impact from the plant site or access road at this distance.

95. CRAG's final additional viewpoint (MSC 4B) was from Townfoot Farm in Symington village. This is a first floor view from about 500 metres to the north of the northernmost edge of the extraction area. Approximately six other properties on this side of the village would experience a similar view. From this location a small proportion of the extraction area would be seen in the middle distance. At this distance I do not think it likely that the dragline or long reach excavator would be significantly more intrusive than an item of agricultural machinery. The emerging water body would represent a more noticeable change of moderate magnitude. However, because of the shallow angle of view, the viewpoint being only about 15 metres above the extraction area, it would not be possible to detect the incongruous shape of the emerging water bodies or their scale. Overall, I find that there would not be significant visual effects on this viewpoint.

96. Turning to the post-restoration effects, the harmful consequences of the proposed plant and machinery would no longer be a concern. However, as I have set out above, these were never the most significantly harmful elements, except from viewpoints very close to the site. My concerns over the form of the emerging water bodies during the operational phase would not be addressed in the post-restoration period because I do not accept that the incongruous, man-made appearance of the resultant water body would be successfully mitigated. The most significant areas of concern would be from high level viewpoints to the north and south. From these viewpoints and from other high level locations that were not studied in detail by any of the parties, such as Overburns Hill, there would remain significant and permanent adverse visual effects due to the prominence of the large and incongruous water body.

97. The appellant's landscape expert accepted that the proposed edge softening works would be ineffective at this range and I have reached a similar conclusion on the visual benefits of proposed reed planting in the shallower areas. I was able to see the clear contrast between the colour of aquatic vegetation in a pond within the proposed plant site and surrounding pasture land when I inspected the site in November. And even in summer months, when reeds would have a greener appearance, my experience, which is not refuted by any evidence that is before me, is that aquatic vegetation would not successfully blur the visual transition between land and water, when viewed either from close by or from more distant locations. I therefore conclude that the excessively straight-edged, man-made appearance of the water body would not be adequately mitigated.

98. My conclusion on the visual impact of the proposed development is that it would cause significant adverse effects on a number of important viewpoints both during the operational period and after restoration. As the latter effects would be permanent they must

carry significant weight in my overall assessment of the proposal's benefits and disadvantages.

Cumulative landscape and visual effects

99. MLDP Policy MIN 3 requires an assessment of the cumulative effects of current and approved minerals and landfill developments.

100. From the site itself, no other current or approved minerals site would be visible so there could be potential for cumulative impact. From elevated positions within the Southern Uplands and Foothills LCTs it would be possible to see the site in conjunction with the Tinto Sand and Gravel operation to the north but from any such viewpoint the Tinto site would appear distant, relatively insignificant and not visually associated with the appeal site. There would therefore be no objectionable cumulative effect with the appeal proposal. I have been advised of no approved, but as yet non-operational sites that could potentially have a greater cumulative landscape impact and I am satisfied therefore that the proposal would satisfy the requirements of Policy MIN 3.

101. Although not required by Policy MIN 3, it is appropriate to consider the potential for this proposal to create a harmful cumulative impact when seen with other, non-minerals development. The GLVIA recognises that cumulative effects can arise from intervisibility of a range of developments.

102. The planning authority and several objectors are concerned with the issue of cumulative landscape and visual impact with the Clyde Windfarm, which is situated at a high elevation, several kilometres to the south of the site. I agree that, in principle, wind energy and mineral extraction may have significant effects on the landscape and on visual receptors. I therefore accept that there is the potential for a cumulative effect. However, in this instance I am satisfied that where the site and wind farm could be seen together, this would not be the case. The wind turbines are very large moving structures which occupy isolated and elevated positions far from the visual context of the settled Clyde Valley. They are seen as a distant backdrop to the valley rather than as a part of it. I am satisfied therefore that there would be no visual association between the turbines and the appeal proposal and therefore no cumulative effect.

Impact on ecology and biodiversity

103. I have assessed the proposal in terms of its effect on statutory nature conservation sites, on European protected species (EPS) and on other ecological and biodiversity interests.

104. In order to assess the proposal's likely impact on ecology and biodiversity the appellant undertook an initial desk-based analysis followed by an extended phase 1 habitat survey. A number of species-specific surveys were undertaken to investigate the presence or absence of particular species or groups of species and to consider the proposal's likely impact. Much of this survey work took place in 2008 and 2009. However, the appellant undertook follow up visits in 2011 to verify that the findings remained accurate. No party

has questioned the methodology used or provided any evidence to challenge the findings and I am satisfied that appellant's survey work forms an appropriate basis for assessing ecological and biodiversity impact.

105. The site lies within the River Clyde floodplain and is predominantly in agricultural use. The appellant's extended phase 1 habitat survey describes the site as largely improved and semi-improved grassland with some marshy areas. There are no statutory or non-statutory nature conservation designations on the site. The closest designated site is the Tinto Hills Site of Special Scientific Interest (SSSI), the nearest edge of which is about 1.7 kilometres from the site. This is an upland heath habitat that is designated for its extensive dry heather moorland and its geology and geomorphology. Between the appeal site and the nearest edge of the SSSI is the River Clyde, a railway line, the A73 and farm land. No party has provided evidence to suggest that the proposal would have any impact on the Tinto Hills SSSI and I agree that this is not an issue of concern. The River Clyde Meanders SSSI is approximately 14 kilometres downstream of the appeal site. SNH advises that this could receive some sediment from the proposed quarry. However, SNH does not consider this to be a significant concern provided that sediment from the proposal is managed appropriately. I consider that this could be addressed by a planning condition controlling methods of operation.

106. I am satisfied therefore that there would be no harmful impact on any statutory nature conservation sites and that in this respect, the proposal satisfies the requirement of local plan Policy ENV 4.

107. With regard to EPS, SPP confirms that planning permission must not be granted for development which would be likely to have an adverse effect on an EPS unless the decision maker is satisfied that there is no satisfactory alternative and that the development is required for imperative reasons of overriding public interest. This reflects the requirements of the Habitats Regulations. Policy ENV 21 of the local plan imposes a similar requirement. MLDP Policy MIN 2 states that development which will significantly adversely affect internationally and nationally protected species following the implementation of any mitigation measures will not be permitted.

108. There are two potential otter holts on the southern bank of the river, within the proposed stand-off between the river and the proposed extraction area. There are also two further potential holts and a rest area on the northern bank, opposite the appeal site. Clear evidence was obtained from surveys in 2009 and 2011 of otter regularly using this stretch of the River Clyde to forage and rest and also using Easterton Burn at least as an access route. Otter is an EPS by virtue of being listed in Annex IV of the Habitats Directive (Directive 92/43/EEC).

109. The appellant's Long Term River Management Plan (LTRMP) sets out its proposals for the long term management of the stretch of the River Clyde that lies adjacent to the proposed quarry. Prior to the commencement of quarrying, the LTRMP sets out a series of works that would be undertaken. These include planting of the stand-off area with a mix of grasses and deep rooted plants / trees, the erection of a stock-proof fence and the carrying out of green bank protection measures to address existing areas of bank erosion.

110. The appellant has prepared an otter protection plan (OPP) in consultation with SNH, to provide a masterplan for mitigation works to minimise the proposal's effect on this EPS. SNH has confirmed that it is satisfied with the OPP.

111. Regulation 3(4) of the Habitats Regulations requires me to have regard to the requirements of the Habitats Directive in determining this appeal. However, in the case of *Vivienne Morge v Hampshire County Council* [2010] EWCA Civ 608, the Supreme Court held that a planning authority does not need to test the proposal against the derogation tests in the Habitats Regulations where the statutory conservation consultee (in this case SNH) has raised no objection on EPS grounds. In this instance, SNH's view is that, subject to mitigation, the proposals are acceptable in EPS terms. From SNH's response to the proposals, which has evolved as the OPP has been refined, it is possible to conclude with confidence that even if an EPS licence from SNH is required, there is no likelihood of this not being granted. I am satisfied therefore that the proposal satisfactorily addresses the issue of impact on EPS and that there is no conflict with local plan Policy ENV 21 or Policy MIN 2 of the MLDP.

112. With regard to broader ecological issues, the ES considered the conservation value of the site (including its immediate surroundings) by assessing features of ecological value and assigning a level of importance to each. It then provided an overall level of importance for the site as a whole. The features that were assessed included specific habitat types that are found on the site and specific functions that the site performs such as its role in accommodating over-wintering birds.

113. The stretch of the River Clyde that adjoins the northern site boundary is identified as having regional conservation value due to its importance for over-wintering birds, fish, freshwater invertebrates and otter, and in recognition of the identification of rivers as a priority habitat in the UK BAP and (as part of the Freshwater and Wetland ecosystems) in the South Lanarkshire BAP. Within the site, the improved and semi-improved grassland is species-poor but provides a foraging area for regionally significant numbers of wintering greylag and pink-footed geese. The watercourses and marshy areas within the site are potentially of ecological value, although the appellant's surveys did not find evidence of any particularly important species.

114. In the absence of any contradictory evidence, I agree with the appellant's conclusion that the site as a whole is of regional conservation value.

115. Aside from the effect on otter, the appellant has detailed the other ecological and biodiversity impacts of the proposal and has concluded that there would either be no significant impact or that any impact would be adequately mitigated by or compensated for in the proposed site restoration scheme.

116. Perhaps the most obvious habitat loss would be the permanent loss of some of the existing grassland fields, which are used for foraging by over-wintering geese. However, I accept the ES finding that this type of habitat is widespread in the locality and that the loss of a small proportion would not have a significant impact on these important species. I also

agree that the creation of shallow water at the north-eastern and south-western ends of the excavated area would create valuable new habitat for a range of species including over-wintering birds and otter and that this would provide adequate compensation.

117. The restoration scheme would create approximately 12 hectares of shallow water, areas of shingle beach and approximately 0.5 hectares of reed bed. The latter is a Priority Habitat in the UK Biodiversity Action Plan (BAP) and is part of the Freshwater and Wetland Priority Habitat in the South Lanarkshire BAP. Parts of the plant site and areas within the extraction area would be restored to marshy grassland. The remainder of the plant site would be planted as species rich dry grassland, with a total area of approximately 2 hectares. The marshy grassland would incorporate shallow scrapes that would create seasonal ponds. Marshes and ponds are part of the South Lanarkshire BAP. Over two kilometres of new hedging would be created and an existing 500 metre section would be reinforced. All hedge plants would be of indigenous species. Species-rich hedgerows are a further South Lanarkshire BAP priority habitat. A wet woodland would be created alongside the river using native trees and shrubs. This would extend to approximately 3.9 hectares.

118. The appellant proposes to create open sandy cliff habitat either within *in situ* materials (cliffs created while the materials are excavated) or on excavated aggregates, storage mounds and soil/sand banks. This would compensate for the potential loss of open sandy cliff habitats which are used by a sand martin colony, due to the proposed green bank stabilisation work. The new cliff habitat would be at least equal to the width of natural cliff currently used by the colony.

119. SNH has raised concern over the potential that the water bodies that would be created as part of the restoration works could be colonised by North American Signal Crayfish. This would pose a biosecurity risk to native species. However, there is no reason why the creation of the lochans would increase the risk of this occurring and it is predicted that of all parts of the River Clyde are likely to be colonised in any event.

120. Overall, I am satisfied that the restoration works would adequately compensate for the ecological and biodiversity impacts of the scheme and would result in a net improvement in the site's conservation value. This is a positive aspect of the scheme that needs to be weighed against the landscape and visual harm and development plan policy conflict that I have identified.

Impact on the water environment

121. The proposal requires to be considered in terms of the implications of and for flooding, its impact on ground water and surface water quality and its impact on the morphology of the River Clyde.

122. With regard to flooding, almost all of the appeal site lies within the 0.5% annual probability floodplain of the River Clyde, as shown in the Indicative River and Coastal Flood Map (Scotland). This makes it unsuitable for many forms of development. However, the MLDP recognises that the functional flood plain contains high quality sand and gravel

deposits which are in demand by the construction industry. Policy MIN 2 is therefore potentially supportive of mineral extraction from the floodplain provided that the risk of flooding to the site itself is either not of concern or can be adequately managed and there is no increased flood risk elsewhere.

123. CRAG points out that site experiences flooding on a regular basis, perhaps five times each year. The appellant recognises this frequency of flooding to the extraction area but suggests that the proposed plant site, being at a slightly higher elevation is less susceptible to flooding.

124. The appellant proposes to address the risks of flooding to the site itself by subscribing to the SEPA's Floodline, installing river level monitoring equipment linked to site offices, carrying out training for site staff, maintaining a register of all present on site and having a clearly defined assembly point for use in the event of flooding.

125. With regard to the risk of flooding elsewhere, no attempt would be made to prevent floodwater entering the extraction area so there would be no significant loss of floodplain storage capacity during the working life of the quarry. The bunding around the plant site and the proposal to store topsoil on the site would result in some reduction in capacity but in relation to the size of the floodplain this would not be significant, particularly if materials storage took place on more elevated parts of the site. A sustainable drainage (SUDS) system would be employed and details of the proposed watercourse crossings would be agreed with SEPA as part of the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (the CAR) process. Following restoration, there would be a slight increase in floodplain capacity, as the level of the restored water bodies would be below the existing ground level.

126. All of the flood related proposals are set out in a flood risk assessment, which has been independently verified on two occasions and has been accepted by SEPA and the council's Flood Prevention / Systems Officer. CRAG questions whether SEPA fully appreciates the scale of flooding that the site experiences and contends that SEPA's requirement that the river never enters the quarry workings is a requirement to prevent any flooding of the site from the river. I do not agree that this is a correct interpretation of SEPA's view, and I note that the planning authority also does not accept this interpretation. Those comments were set out in an annex to SEPA's consultation response letter of 9 September 2011 under the sub-heading "Morphology" rather than under the sub-heading "Flood Risk", which was also addressed in that document. I have therefore considered (later in this notice) this requirement of SEPA in relation to river morphology.

127. Taking all of the evidence into account I conclude that the proposal would adequately address the risks posed by flooding to the appeal site itself and would not result in any increased risk of flooding elsewhere either during operations or following restoration. I am satisfied therefore that the proposal would satisfy these requirement of MLDP Policy MIN 2.

128. Turning to the impact on ground water and surface water quality, protection is afforded to the water environment by the CAR. This requires a licence to be obtained from

SEPA for certain works which pose a potential risk to the water environment. Three elements of the proposed works would require authorisation under the CAR: engineering works including river bank stabilisation and erosion protection, the abstraction of water from the extraction area for use in processing the excavated material; and discharge of that water and surface water to groundwater. Planning controls should not seek to duplicate controls that exist under other legislation. However, it would be inappropriate to leave the consideration of these activities entirely to the CAR licensing stage, as they potentially raise issues of valid planning concern. I have therefore tested all elements of the proposal against the requirement of MLDP Policy MIN 5, which presumes against proposals for minerals development which would have a significant adverse impact on the water environment.

129. Water quality in the River Clyde is assessed by SEPA to be poor, due to a number of issues including sewage disposal and livestock farming. However, it remains essential that the proposed development does not worsen these conditions. There are proposed to be no discharges from the site to the river or its tributaries, and measures that are proposed to prevent pollutants entering ground water, which I have discussed below, would also effectively minimise the risk of inadvertent river pollution.

130. Concern has been expressed by CRAG and a number of local residents over the potential for siltation of the river. However, the discharge of water and suspended solids from the processing plant would be to the Phase 1 excavation, which is at the lowest risk of flooding, and sediment deposition would be below the surface so as to reduce the likelihood that suspended solids would migrate out of the site during a flood event. The direct connection between river and groundwater levels means that at times of flood, any silt on the appeal site would be submerged below groundwater level and would not therefore be exposed to floodwater movement. The extent of the floodplain at this location also results in slow-moving flood water which is less likely to wash submerged silt from the site. SEPA has confirmed that, subject to a planning condition requiring an environmental management plan to include details of the site drainage strategy, it is satisfied that the proposal would not pose a pollution risk. Subject to such a condition, I am satisfied that the proposal would pose no unacceptable risk of pollution to the river and would comply with this requirement of Policy MIN 5.

131. With regard to ground water, the principal potential pollution source is from spillages of oil, diesel etc onto land. The risk of ground or surface water contamination from fuel or oil would be minimised by undertaking refuelling operations of mobile plant and carrying out any maintenance and servicing operations, only in the plant site. Fuel and oil would be stored in a bunded area outside the 0.5% annual probability floodplain. SEPA has confirmed that, subject to the proposed environmental management plan setting out details of these issues, it is satisfied with this issue. On the basis of all the evidence that is before me, I am satisfied that the proposal would not pose an unacceptable pollution risk to ground water and would comply with this requirement of Policy MIN 5.

132. The morphology of the River Clyde has been studied using historical maps, water level monitoring and field surveys. From this the appellant concludes that the river is presently stable and is constrained by the former Lamington Quarry pool upstream of the

appeal site, which is a legacy of historic in-river sand and gravel working. By monitoring groundwater and river levels the appellant has determined that the groundwater table is in continuity with the river. This reduces the likelihood of ground instability in the proposed stand-off area being created during extraction operations due to differential pressure being established between the river and the workings. However, in 130 to 150 years, when natural sediment deposition has in-filled the quarry pool, the river is predicted to regain a more natural, dynamic state. At this time, there could be gradual erosion of the stand-off between the river and the restored workings.

133. The appellant's LTRMP details an engineering strategy to mitigate these potential natural erosion effects including buried rock armour protection within the stand-off area. The effect of these works would be a potential restriction on the natural morphological process of the river because in the event that it naturally altered its course to move in the direction of the rock armour, it would, upon reaching that barrier, be restricted from meandering any further in that direction for the length of the barrier. However, if the natural meandering of the river were to take it in the opposite direction, the proposed rock armour protection works would of course have no morphological impact.

134. Historical maps show that the river has changed its course significantly at this point over the past 200 years and SEPA has described the effect of the proposed rock armouring works as a significant local adverse impact on morphological processes. However, it has not objected to the proposal on this basis and, given the uncertainty as to how the river may meander in the future once it regains a more dynamic state, and the freedom the river will retain to meander at other points along its progression through the valley, I do not consider the potential effects of the proposed rock armour works on river morphology to be a significant concern.

135. The appellant's estimate of the time period within which the proposed rock armour and other LTRMP mitigation works would offer protection from the river migrating into the restored water body is at least 250 years. SEPA originally required a guarantee that the river would never enter the quarry workings. Following subsequent discussions with the appellant however it does not appear to have maintained that position, as having heard from the appellant that an in-perpetuity obligation would be unacceptable it accepted the LTRMP proposals.

136. The planning authority and CRAG do not consider that long-term protection could be adequately secured, either through a planning condition or an obligation. The first reason for this is one of uncertainty as to the precise specification of any works, given that the solution to be employed would potentially evolve over time through the AMP. I do not share these concerns. Although the precise position and specification of rock armouring and other works may be subject to change, the overall scale of works and the objective they are aimed at securing are clear. I see no difficulty in achieving a clearly drafted planning obligation or a condition that would oblige the appellant to carry out river management works to a specified timescale in accordance with an agreed specification but subject to agreed adjustment as a consequence of any issues that might arise through the AMP. Such works would be undertaken within a reasonable timescale (that is, before the

appellant had finished the site restoration works) even though they would not be likely to have any direct effect for at least 130 years.

137. The second area of concern for the planning authority and CRAG is over the legality of a planning obligation that did not involve other riparian owners. The planning authority has referred me to a number of authorities that concern the question of whether a party may carry out works to a watercourse, which might have consequential adverse effects on the interests of other riparian owners. It contends that it is a well established common law principle that unless the owners of all other land which might be affected by such works are agreeable, the works would be unlawful. As a result, it is argued that a planning obligation that sought to secure such works would be unlawful unless the other owners were parties to it. The owners of land both upstream and downstream of the appeal site and on the opposite bank of the river are members of CRAG and are opposed to this proposal. They would not therefore agree to any obligation that sought to secure such works.

138. The facts of the cases to which I have been referred differ from the appeal proposal in that they involved works within the banks or channel of a river, whereas the element of the mitigation measures that the LTRMP intends to endure in the long term (the rock armour protection) would be carried out at some distance from the river itself, within the proposed stand-off area.

139. Furthermore, in all of the cases to which I have been referred, one can identify a direct link between works to the river and the risk of adverse effects to other parties. However, in the case of this proposal, there is a much less direct connection. The rock armour element of the appellant's proposed works would only affect the morphology of the river if its course changed naturally over time in such a way that the stand-off area between the river and the restored workings became eroded to the point where the rock armour protection became exposed. If the river did not meander in the direction of the rock armour or did not move far enough in that direction to reach the rock armour then that feature would have no effect on the river or on other riparian land owners. And even if the course of the river did alter in such a way that the rock armour became exposed, this would take place at such a distant point in the future that it is not possible to predict with any certainty what implications, if any, this might have for neighbouring land, given the large number of other factors that would need to be taken into account, particularly the effects of climate change.

140. I am not convinced therefore that in order for the measures that are proposed within the LTRMP to be lawfully secured in a planning obligation, it would be necessary to secure the agreement of neighbouring riparian owners. In any event, as I have referred to below, I consider that the provision of appropriate protection measures could be secured by a planning condition. Therefore the reluctance of other parties to commit to an obligation would not be a relevant concern.

141. Turning to the question of whether it is appropriate for the protection measures to be maintained over a long time period, I agree with the appellant that this would be neither necessary or reasonable. I consider that it would be sufficient to ensure that the protection measures were put in place to an agreed specification, which was expected to be capable

of enduring without maintenance until such time as the armour became exposed by erosion (that is, a period of at least 130 years) and then for a further significant period during which they would form the bank of the river. The appellant has provided examples of rock armour that has existed, apparently without maintenance, in more active rivers than the Clyde for over 200 years and I see no reason to doubt that a similarly robust solution could be agreed here. This could be achieved by a planning condition. I also conclude that a requirement to guarantee that there would never be a breach of the stand off or that the works be maintained for a period in excess of the initial maintenance period for the restoration works would not comply with the SPP expectation that planning constraints and requirements are necessary and proportionate.

Impact on prime quality agricultural land

142. SPP identifies prime quality agricultural land as a finite national resource that should be protected. It confirms that development on such land should not be permitted unless it is an essential component of the settlement strategy or is necessary to meet an established need, for example for major infrastructure development, where no other suitable site is available. In the MLDP such land is included within Category 2 of the plan's hierarchy of natural and built heritage sites, which indicates that it is of national importance.

143. The most recent Land Capability for Agriculture (LCA) map categorises the land at Overburns within Class 3 Division 1, which is within the definition of Prime Agricultural Land. However, such broad-based classification does not take account of certain site-specific factors such as susceptibility to flooding. It has been demonstrated that this site experiences damaging winter flooding more frequently than once every five years, which is the threshold above which the classification of a site for Class 3 agriculture is likely to require downgrading. Parts of the site are affected by flood water as often as five times a year and the appellant contends that the site should be classified as Class 5 within the LCA system (being only suitable for grazing).

144. Taking this site-specific evidence into account, I agree that, notwithstanding the site's classification as Prime Agricultural Land, it would not be reasonable to regard the site's agricultural quality as of national importance.

Community impact

145. SPP aims to minimise significant negative impacts from minerals extraction on the amenity of local communities and advises that extraction should only be permitted where impacts on local communities can be adequately controlled or mitigated.

146. The MLDP adopts a buffer approach around settlements that are identified in the plan's environmental constraints map, within which minerals developments are not normally permitted. In accordance with SPP, the extent of such buffers depends on the particular circumstances of the case. The key objective is to ensure that development has no significant adverse effects on settlements. Policy MIN 7 seeks to ensure that all applications for mineral development will not create an unacceptable impact through the generation of noise, dust, vibration, air and light pollution. I have considered each issue in

turn before considering the impact the proposal might have on local residents in terms of the siltation of adjacent land and any effect on private water supplies.

147. The nearest settlements to the appeal site are Lamington (the nearest edge of which is approximately 1.4 kilometres from the site access, to the south west), Coulter (about two kilometres to the north east) and Symington (the nearest edge of which is about 500 metres to the north of the extraction area, across the river). However, there are individual residential properties that are closer to the site. The residential neighbours nearest to the proposed extraction site are at Symington Mains (315 metres to the north across the river), Townfoot Farm, Symington (475 metres to the north east across the river), two properties at Broadfield (540 metres to the north west across the river) and three properties at Langholm (675 metres to the south west). The nearest residential properties to the proposed access road are Overburns Cottages (129 metres away), Overburns Farm (135 metres away), Loanhead (on the A702, 335 metres to the south west) and the three properties at Langholm, the nearest of which would be about 495 metres away.

148. The quarry would operate between the hours of 0700 and 1900 hours on weekdays and 0700 to 1300 on Saturdays. These times are consistent with advice in PAN 50 Annex A: The Control of Noise at Surface Mineral Workings. Outside of these hours only essential maintenance work would be carried out. Materials would be hauled from the site during more restricted hours of 0700 to 1700 Monday to Friday and 0700 to 1300 on Saturdays.

149. Material would be extracted using a hydraulic dragline and/or a long reach excavator. During phase 1 of the extraction process, material would be moved to the plant site by dump truck. In subsequent phases (2a, 2b and 3) a field conveyor would be used. Overburden from the phases would be moved around by dump truck unless it was being moved only a short distance when a dragline or long reach excavator would be used. As the material would be extracted wet there would be no need for water to be pumped out of the extraction areas.

150. The plant site is where the extracted material would be washed and screened. The aggregates plant that would perform this task would include a rock crusher but due to the nature of the mineral, this would not be in continuous use.

151. PAN 50 Annex A recognises that quiet rural areas might be more sensitive to noise nuisance than areas where background noise levels are already higher. However it also recognises that, when a mineral extraction operation is authorised, temporary operations may need to take place which will be noisier than would normally be permitted. The appellant has identified soil stripping, overburden removal and handling, screen mound and habitat shallows construction as operations that would be carried out for no more than eight weeks in any year and would therefore be subject to a higher noise threshold than would apply to activities that were undertaken on a daily basis throughout the year. In assessing whether the noise output during such temporary activities would remain within the permitted limit, the appellant has assumed that the temporary rock crushing activities would be carried out simultaneously, as this represents a worst case scenario. For all noise sensitive



neighbours, the assessment concludes that predicted noise levels during these temporary operations would be below 50 dB, which is well within the PAN 50 Annex A limit.

152. Noise from on-going extraction and processing operations, to which PAN 50 applies a stricter noise limit, is also predicted not to exceed the stated limits at any noise sensitive neighbour. The noise that would be generated by heavy goods vehicle movements is also predicted to have no discernible effect on any noise-sensitive neighbour.

153. CRAG's noise consultant raised a number of queries over the appellant's noise surveying methodology, and the appellant and the planning authority carried out further work on this issue. CRAG objects to my consideration of this additional evidence as it has not been publicised under the EIA Regulations. However, as I have considered the evidence in the ES and concluded that there would be no objectionable noise impact and, having considered the additional evidence, not amended my conclusion, whether the additional evidence had been excluded from consideration or had been publicised under the EIA Regulations, this would not have affected my conclusions on this issue or my decision on this appeal.

154. In conclusion, I am satisfied that although the appellant's initial measuring of background noise levels might have been more representative if it had excluded rather than included certain intermittent noisy events, this does not materially affect its findings as the noise sensitive receptors which currently experience high peaks in noise are those where background noise is consistently higher (for example the properties close to the A702) . Similarly, although the calculation of noise from all noise generating sources was not presented cumulatively, as is required by BS5228, when the emissions are recalculated in this way, the only noise sensitive receptor that would experience a discernible increase in noise would be Whitehill House, which is in common ownership with the appeal site and would, in a worst-case scenario, experience only a moderate increase.

155. Dust impacts can affect air quality (and by implication health) and can cause nuisance, depending on the size of the particles involved. The smallest particles, known as PM₁₀ (with a diameter of up to 10 micrometres) constitute suspended dust, which can have potential air quality / health impacts. Larger particles (with a diameter up to 75 micrometres) are categorised as deposited dust and can lead to nuisance complaints.

156. Sources of dust from the proposed development include site preparation, extraction operations, materials processing and storage and vehicle movements.

157. Based on earlier studies into the emission of PM₁₀ from quarrying operations, the appellant has assumed that the operation of the proposed quarry would, without mitigation, add 5 micrograms per cubic metre to the annual ambient concentrations of PM₁₀ particles. When added to the average existing level of such particles, which the appellant has calculated from published data at 8.58 micrograms per cubic metre, the resultant PM₁₀ concentration would remain well below the objective of 18 micrograms per cubic metre, which is set out in the Air Quality Strategy for England, Wales, Scotland and Northern Ireland (2007). The appellant also refers to research that has identified that such emissions could be expected to reduce by 90%, only 50 metres downwind. Several local people have

expressed concern over this issue. However, in the absence of any contradictory evidence I am satisfied that the proposal would have no objectionable effect on air quality.

158. Turning to the potential nuisance effects of deposited dust, PAN 50 Annex B: The control of dust at surface mineral workings, confirms that residents living in proximity to mineral sites can potentially be affected by site dust up to one kilometre from the source, although continual or severe concerns about dust sources are most likely to be experienced near to dust sources, generally within 100 metres. Using meteorological data the appellant has estimated the likelihood of all nearby properties being affected by deposited dust. This identifies a requirement for mitigation of access road dust so as to avoid nuisance to Overburns and Overburns Cottages and mitigation of excavation works dust so as to avoid nuisance to Townfoot Farm during Phase 3 excavations.

159. The proposed mitigation measures are intended to address the effects of deposited dust but would also reduce the level of suspended dust below the 'worst case' level that the appellant has predicted. These include a wheel wash at the entrance to the plant site, vehicle speed restrictions within the site, use of a water bowser to wet the access road and storage mounds in dry or windy conditions and the use of a road sweeper. The screening bund and planting around the perimeter of the plant site, which would be the focus for materials storage activities would also mitigate the transportation of dust in addition to providing visual screening benefits.

160. The appellant has estimated that after implementing this mitigation, the residual effect from dust on the three identified receptors would be insignificant. This seems plausible and I note that the council's Environmental Health Officer has no objections to the proposals, subject to appropriate conditions. In the absence of any contradictory evidence, I accept this conclusion.

161. The appellant considered any possible adverse implications that the deposition of dust might have for nearby organic agricultural land or for the Tinto Hills SSSI. In the absence of any evidence to the contrary and the absence of any objections from the council's Environmental Health Officer, I agree with its conclusion that there are no grounds to suspect that there would be any adverse impact.

162. There would inevitably be a degree of light pollution from the proposal, particularly during winter months when the requested hours of operation would extend beyond the hours of daylight. Lighting is likely to be required at such times at the extraction point and in the plant site. Vehicles entering and leaving the site would do so during more restricted hours, but in winter there would still be a need for the use of headlights at certain times. Bearing in mind the separation between any sensitive receptor and these light sources, I do not consider that there would be any significant harm to amenity. CRAG raised concern that there might be a security requirement for overnight lighting but this could be dealt with using passive infra-red detectors as one might expect to find within a farm yard. Overall, I conclude that light pollution would not be a significant concern.

163. Neighbouring land owners are understandably concerned that in times of flood, silt from the site could be carried onto adjoining land. However, as I set out in my conclusions

on the proposal's likely impact on the water environment, the measures that the appellant proposes to employ when handling silt are likely to avoid floodwater carrying silt out of the site. In the absence of any evidence to challenge the appellant's confidence in this approach, I conclude that this potential source of nuisance would not have any objectionable impact on neighbouring land owners.

164. There are several local properties that take a private water supply from the ground water, but none is downstream of the appeal site and there are no evidence of any pathway between the site and these supplies. Accordingly there are no grounds to suspect that the proposal would have an adverse impact upon these private water supplies.

Impact on the road network

165. The site would be served by a new 7.3 metre wide access road, which would join the A702 approximately 95 metres to the south west of the existing farm access. The existing access would be closed for the duration of extractive operations and the farm traffic would use the new access. The access would be provided with 9 metre by 215 metre visibility splays to either side and a deceleration lane for vehicles turning right into the site. This would result in the loss of some roadside trees, which I have taken into account when assessing the proposal's landscape and visual impact.

166. The design of the junction has been agreed with Transport Scotland and would require to be constructed to its specifications. At the inquiry session the appellant's landscape witness offered to substitute a four metre wide access road with parking spaces if this were considered preferable in landscape and visual terms. I have not considered that informal proposal as part of the scheme because it would not alter my conclusions on the site's overall landscape and visual impact, and because the views of Transport Scotland on a narrower access are not known.

167. Current traffic volumes on the A702 were surveyed. These were also projected forward to 2021 to account for forecast growth. Traffic safety records were consulted, which identified no particular safety issues in the vicinity of the proposed access. The proposed development is predicted to generate 112 two-way heavy goods vehicle movements per day, 60% of which would travel to/from the south and the remainder to/from the north. The heavy goods vehicle trips and staff trips combined would add a maximum peak hour increase of 6.8% in current traffic levels and an average daily increase of approximately 3%. As such an increase would be within the normal day to day fluctuation one would expect to encounter, and as the resultant traffic levels would remain well within the design capacity of the road, I conclude that the proposal would have no adverse impact on road safety or have any objectionable impact on road users. This is consistent with Transport Scotland's response to the proposals, which was to raise no objections subject to conditions.

Impact on tourism and recreation

168. The potential impact of this proposal on tourism and recreation in the area is a concern that has been raised by a significant number of local people. Although tourism is

not as significant an employer of local people as agriculture it is important to the economy of the area, with angling and walking being particular local attractions.

169. It claimed that the proposal could affect tourism and recreation by having a harmful impact on the local landscape, by causing traffic congestion on local roads and, particularly in the case of anglers and canoeists using the adjacent river, by creating noise and disturbance.

170. The appellant commissioned a tourism impact assessment for the proposal. This looked at 83 tourism assets including landscape features, tourist attractions, tourist accommodation and recreational activities that can be undertaken in the local area. It concluded that during extraction operations there would be a moderate or greater impact on 17 features but that on restoration, the site would provide a net increase in tourism resources in the area. These findings have not been challenged with comparable evidence.

171. There are no designated core paths or other recognised routes across the site but the hills, minor roads and paths around this part of the Clyde valley are used by walkers and cyclists and the elevated nature of many of these would afford views of the site to such recreational users. Tinto Hill is a particularly popular walking route and was extremely busy when I inspected it in August. As I have set out above when considering landscape and visual impact issues, due to their focus on the landscape, these types of receptor should be regarded as particularly sensitive to any development proposal that would have an industrialising or visually intrusive impact on the countryside.

172. The importance to the local economy of this group is difficult to quantify. However, it is reasonable to assume that walkers and cyclists make up a significant proportion of recreational visitors to the area so their contribution to the local economy is likely to be important. Quarrying is an established part of the local landscape, with the Tinto Sand and Gravel Quarry visible from the most popular walking route on Tinto and this does not appear to have deterred such visitors to the area. Therefore, despite the significant adverse landscape and visual effects that would result from the proposal, I conclude on balance, having regard to all of the evidence that is before me, that the proposal would not significantly discourage this type of recreational user from continuing to visit the area.

173. The A702 is promoted as the Clyde Valley Tourist Route so is likely to be used by drivers who are not simply travelling to their destination but who are intent on enjoying the scenery and surroundings through which they are travelling. However, the landscape and visual impact assessment has demonstrated that it is only the site access that would have any material effect on this receptor. Its main effect would be the obstruction of an existing view of Tinto. However, similar views would be available to either side of the proposed access and I am satisfied that the impact on users of the tourist route would not be significant. There would be additional heavy goods vehicles on the A702 but this vehicle type is not uncommon on this route and the additional vehicles would be insignificant when compared with existing traffic levels. The road has adequate capacity to cope with the additional traffic so there is no likelihood of traffic delays as a result of the proposed development that would be likely to dissuade tourists from using the tourist route or the wider area.

174. Probably the most significant tourism / recreation impact of the scheme would be on anglers and canoeists using the stretch of the River Clyde that runs adjacent to the site. This part of the river is a designated core water route in the South Lanarkshire Core Paths Plan in recognition of its use by, and suitability for, canoeists. The proposal would not prevent access to the river for anglers or canoeists but the industrialisation of the site during the extraction period due to the noise and visual impact of machinery and vehicles is likely, despite the stand-off area, to make this stretch of the river less attractive to such users than it is at present. The appellant has not challenged CRAG's contention that anglers and canoeists are important to the local economy. However, there are alternative fishing locations within the Lamington area to which anglers could be displaced and other opportunities for canoeists to enjoy the river. Therefore, there are no grounds to conclude that there would be a significant reduction in angling or canoeing across the local area as a whole as a result of the appeal proposal.

175. Following restoration, the site would provide opportunities for visitors to walk around the water body, and the proposed car park would be of assistance to those wishing to fish in the river. These would represent slight improvements to recreational opportunities in the area.

176. Taking all of the evidence into account, I am satisfied that during operations the proposal would not have a significant harmful impact on tourism and that following restoration there would be a slight benefit.

Other matters

177. The proposal would create seven new full time jobs at the site and contribute to the continued employment of a further eight drivers. The appellant has calculated the likely indirect and induced employment benefits of the proposal using recognised techniques and concludes that there would be 13 indirect full-time equivalent jobs and nine induced full-time equivalent jobs created as a result of the proposal. These are positive benefits of the scheme that require to be considered when deciding whether planning permission should be granted.

Conclusions

178. I have concluded that within South Lanarkshire there is not an identified land bank of permitted quarries that is capable of meeting the identified need for sand and gravel over the next ten years. This, and the economic benefits for the local area that are predicted to arise, are considerations in favour of allowing the appeal.

179. However, taking all matters into account, these benefits of the scheme do not outweigh the significant adverse landscape and visual effects that would arise, both during operations and, most significantly, following restoration, and the consequent conflict with the development plan.

180. The appellant has suggested that areas of concern could be addressed by conditions which would have the effect of amending the proposal. However, I must

consider the scheme that is before me and I do not accept that it would be appropriate to seek to amend the scheme by conditions when the extent and the implications of those changes are unknown and would be likely, given the significance of the adverse landscape and visual effects, to create an entirely different proposal with consequential implications for other issues such as biodiversity, all of which would be likely to require fresh environmental assessment.

David Buyla
Reporter



INVESTOR IN PEOPLE



Decision by David Buylla, a Reporter appointed by the Scottish Ministers

- Appeal reference: PPA-380-2021
- Site address: Overburns Farm, Lamington, Biggar, ML12 6HP
- Claim for expenses by Patersons of Greenoakhill Ltd against South Lanarkshire Council
- Date of inquiry and hearing sessions: 12, 13, 16 and 19 November 2012

Date of decision: 9 January 2013

Decision

I find that the council has not acted in an unreasonable manner resulting in liability for expenses and, in exercise of the powers delegated to me, I decline to make any award.

Reasoning

1. My decision to dismiss the planning appeal has already been issued.
2. Circular 6/1990 provides guidance on the conditions which require to met before an award of expenses will be made. The first requirement is that they are made at the appropriate time, which in the case of a public local inquiry, will normally be before the inquiry is concluded and in the case of written submissions, will be with the party's final written submissions.
3. The circular pre-dates the legislative changes which were introduced by the Planning etc (Scotland) Act 2006 and the Town and Country Planning (Appeals) (Scotland) Regulations 2008 (the 2008 Regulations). It is now possible for different aspects of an appeal to be considered via different processes (inquiry session, hearing session and/or written submissions). This is what happened with this appeal. It is necessary therefore to apply the guidance in the circular to the new procedures in a way that is fair to all parties and is in the spirit of both the circular and the subsequent legislative changes.
4. I held an inquiry session to consider landscape and visual impact issues on 12, 13, 16 and 19 November 2012. The appellant's claim for expenses was made at the end of the inquiry session. It relates to a wide range of issues, concerning the way in which the council determined the planning application that led to this appeal. The council contends that I should only consider the appellant's claim in so far as it relates to landscape

and visual issues, as for all other matters (which were not considered at the inquiry session) the normal deadline for submitting an expenses claim had passed. However, the objective behind the setting of submission targets in the expenses circular was to avoid delays in the consideration of the appeal itself. That problem does not arise in this case because although the 2008 Regulations permit me to consider different matters via different procedures, I am unable to reach a decision on the appeal until the final procedure has been completed. There is no disadvantage to the council in having to respond to the appellant's claim in one go, rather than in stages. I have therefore considered all aspects of the appellant's claim.

5. The second requirement of the circular is that the party against whom the expenses claim is made has acted unreasonably. The final requirement is that it must be demonstrated that this unreasonable conduct has caused the claimant to incur unnecessary expense. Both requirements must be proven if an award is to be made. The appellant has raised five grounds ((a) to (e)) in support of its expenses claim. Having regard to the circular's second and third requirements, I have dealt with each ground in turn.

6. The first two grounds ((a) and (b)) are interrelated and I shall consider them together. It is alleged that reasons for refusal 3, 4, 5, 6, 7, 8, 9 and 10 are irrelevant, that the refusal was not based on reasonable planning grounds or a proper consideration of the development plan and other material considerations including the views of Scottish Natural Heritage (SNH) and the Scottish Environment Protection Agency (SEPA).

7. Reason for refusal 3 relates to the implications of the proposal for otter and asserts that these are unknown. Impact on otter, being a European Protected Species, is a relevant and important planning consideration, which is the subject of development plan and national planning policy and to which it was reasonable for the council to refer.

8. The appellant alleges that SNH's up to date position on otter was not accurately presented in the council's Planning Committee report and that by the date the council determined the application, SNH was satisfied with the proposal's impact on otter. However, the council did not receive confirmation of SNH's position until nine days after the committee meeting. It had received advice from the appellant that it had reached agreement with SNH over this issue, and this update was reported to the Planning Committee. However, it was not unreasonable for the council not to have amended its position in response to that advice. The council could have deferred consideration of the application until it received confirmation of SNH's views. However, as the application was recommended for refusal for a number of other, unrelated reasons, this would not have avoided the need for an appeal and would have delayed the process. Given the expectation from Scottish Ministers that planning applications are considered as expeditiously as possible, the council's decision not to defer consideration of the application was reasonable. I conclude that in imposing reason for refusal 3, the council did not act unreasonably.

9. Reason for refusal 4 deals with landscape and visual issues. The appellant contends that the council's approach to assessing landscape and visual impact did not accord with the development plan because the council's case at the inquiry session

revealed that it regarded the landscape around the appeal site as a particularly sensitive core area within the Tinto and Clyde Valley Special Landscape Area (the SLA). I agree that there is no development plan policy basis for differentiating landscape sensitivity within a SLA and regarding the impact of a proposal on the SLA as a whole as more significant because it would affect a particularly sensitive part of it. However, this is not what the council did, and I do not consider that its description of the environs of the site as the 'heart' of the SLA or its view that this landscape was especially sensitive, was in conflict with the development plan. Development plan policy (and national policy in Scottish Planning Policy (SPP)) requires a consideration not only of effects on designated areas such as the SLA but also on landscape character and visual impact more generally. The council was entitled, in undertaking this exercise, to conclude that the locality of the appeal site was especially sensitive to the type of development that was proposed. Indeed a landscape-specific assessment of sensitivity to this development was also the approach taken by the appellant in its Environmental Statement (ES).

10. I do not accept the appellant's claim that the authority's position at the inquiry session was materially different to that at the time it determined the planning application. From the committee report it is clear that the authority considered the environs of the appeal site to be particularly sensitive and I am satisfied that its position at the inquiry session was consistent with this.

11. There is a dispute between the appellant and the council as to whether the appellant requested sight of the Ironside Farrar report on which the council based its landscape and visual reasons for refusal. It is impossible for me to determine whether a request to see this document was made, but even if the appellant had had access to that document, there are no grounds to suspect that it would have been able to satisfy the council's concerns on landscape and visual issues and thereby avoid the need for these matters to be considered at appeal. I am satisfied therefore that, based on reason for refusal 4, there are no grounds for an award of expenses against the council.

12. Reason for refusal 5 asserts that impact on the water environment had not been properly addressed. This is alleged to be unreasonable because both the Scottish Environment Protection Agency (SEPA) and the council's own flooding officer had accepted the appellant's proposal before the matter was reported to Planning Committee. The council's response is that it received SEPA's comments after the report was prepared but before the committee, that those views were taken into account but did not alter its conclusions.

13. The council is not obliged to follow the advice of its consultees, provided that it has reasonable grounds for doing otherwise. It explained in its appeal statement that its concerns related to a significant local impact on the natural morphological processes of the river, which was an issue of concern also to SEPA, albeit not one that it raised as a formal objection. It also raised concerns over the creation of extensive hard bank engineering works. In the appellant's Long Term River Management Plan (LTRMP) it was confirmed that set-back rock armour might be an alternative to hard bank engineering. However, it does not appear that hard bank engineering had been ruled out as a solution, and the council was entitled to have concerns over this matter at the time it determined the



application. It was also entitled to regard such works as unacceptable even if SEPA did not, because the council, as planning authority, is required to consider matters relating to the water environment in a wider context, including not only whether the proposed works would be able to resist erosion but also whether they would have acceptable landscape, visual and biodiversity implications. I am satisfied therefore that, based on reason for refusal 5, there are no grounds for an award of expenses against the council.

14. Reason for refusal 6 asserts that the landform of the proposed restoration scheme would be inappropriate and would create limited ecological benefits. I have explained above in relation to reason for refusal 4 why I consider the council's conclusions on landscape and visual impact to be reasonable. With regard to the ecological benefits, the appellant contends that the council did not take account of the confirmation from SNH and the RSPB that the development would result in biodiversity benefits. However, the views of these consultees were set out within the committee report so it can be assumed that they were taken into account. And neither consultee suggested that the biodiversity benefits would be of overriding importance. It was not unreasonable therefore for the council to conclude that these were limited and I am satisfied that, based on reason for refusal 6, there are no grounds for an award of expenses against the council.

15. Reason for refusal 7 asserts that the proposal would result in the irreversible loss of prime quality agricultural land. The appellant has not challenged the factual accuracy of the council's assertion but considers that it should have given greater weight to the site's tendency to flood when assessing its agricultural value. The relevant development plan policy (Policy MIN 2) does not explicitly provide an exemption for land that is prone to flooding but the council did fully consider the appellant's arguments in its committee report. The fact that it did not accept the appellant's position and proceeded to test the proposal against Policy MIN 2 was not unreasonable. And having done so, it was reasonable for it to conclude that the requirements of the policy were not satisfied. I am satisfied that, based on reason for refusal 7, there are no grounds for an award of expenses against the council.

16. Reason for refusal 8 relates to impacts on tourism and recreation. The appellant asserts that this was not supported by evidence and was therefore irrelevant and unreasonable. I disagree. The council set out its consideration of this issue clearly in the committee report and concluded that, based on the landscape and visual harm it had identified, which it concluded was a key tourism attribute, there would be a harmful tourism and recreation impact. This was not an unreasonable conclusion and I am satisfied that, based on reason for refusal 8, there are no grounds for an award of expenses against the council.

17. Reason for refusal 9 asserted that there would be a permanent adverse impact on the environment, which would be to the detriment of the local community. The appellant contends that this was not supported by any clear or reasoned justification. However, I agree with the council that section 6 of the committee report, in identifying the impacts which the council considered to be harmful and by referring to relevant development plan policies, adequately explained the environmental and community impact. I am satisfied that, based on reason for refusal 9, there are no grounds for an award of expenses against the council.

18. In reason for refusal 10 the council stated that the proposal would have a significant adverse impact on the morphology of the River Clyde and that the future maintenance and aftercare of the required river bank engineering solutions, proposed within the planning application, could not be effectively secured. The appellant refers to SEPA's confirmation that it was satisfied with the proposals. However, it was not unreasonable for the council to have had doubts at that stage as to whether, acting as planning authority, it was able to secure the bank engineering measures that SEPA had agreed, in the longer term. It explained in some detail in its response to the appeal the reasons for its doubts, and while, in my consideration of the appeal, I did not agree with the conclusions it had drawn from the authorities it referred to, they were not unreasonable. I am satisfied that, based on reason for refusal 10, there are no grounds for an award of expenses against the council.

19. The appellant's ground (c) attributes the council's decision to refuse planning permission to the high level of local opposition. However, there is no evidence that this was the case. On a number of occasions, the committee report, having set out the concerns of local residents, advised the committee that these would not be valid grounds of objection. And my impression of the advice to committee overall is that the proposal was presented in a fair and balanced way, without undue weight given to the level of local opposition.

20. Under ground (d) the appellant alleges that the council had a predetermined opposition to the proposal, based on its refusal of an earlier proposal. The only evidence given for this is a reference to a paragraph in the committee report in which the proposal is described as "unacceptable in principle". I agree with the council that this phrase has been taken out of context, as the purpose of the paragraph referred to is to explain why it would have been inappropriate to require the appellant to undertake further work on the proposal when, for reasons already set out in that report, the application would be recommended for refusal in any event. The conclusion that there was an in principle objection to the proposal was therefore a result of an analysis of the specific characteristics of that proposal and did not rely upon or refer back to the earlier scheme. There is therefore no evidence of predetermination.

21. Finally, ground (e) claims that the council did not give proper regard to the need for the proposal and that it deliberately sought to inflate the size of the minerals land bank by granting permission for another scheme. However, I am satisfied that the council fully justified in the committee report and in subsequent appeal submissions, its analysis of the land bank and of what it argued to be consequent unconvincing need for the appeal proposal. I also agree with the council that it could not have timed the delivery of the Garvald Quarry permission because the trigger for that permission being issued was the completion of a planning obligation to which the council was but one party.

David Buylła

Reporter



INVESTOR IN PEOPLE



Directorate for Planning and Environmental Appeals
Claim for an Award of Expenses Decision Notice

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Decision by David Buylla, a Reporter appointed by the Scottish Ministers

- Appeal reference: PPA-380-2021
- Site address: Overburns Farm, Lamington, Biggar, ML12 6HP
- Claim for expenses by the Clyde River Action Group (CRAG) against Patersons of Greenoakhill Ltd
- Date of inquiry and hearing sessions: 12, 13, 16 and 19 November 2012

Date of decision: 9 January 2012

Decision

I find that the appellant has not acted in an unreasonable manner resulting in liability for expenses and, in exercise of the powers delegated to me, I decline to make any award.

Reasoning

1. My decision to dismiss the planning appeal has already been issued.
2. The claim for expenses was made before the close of the inquiry session and was therefore made at the appropriate time.
3. Circular 6/1990, which provides guidance on the conditions which require to met before an award of expenses will be made, confirms that awards of expenses in favour of third parties will be made only in exceptional circumstances. In general, third parties will not be eligible to receive expenses where unreasonable behaviour by one of the main parties relates to the substance of that party's case. But where unreasonable conduct at a public local inquiry causes unnecessary expense, third parties may be awarded expenses.
4. CRAG alleges that the appellant introduced new material to the appeal, contrary to the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 (the EIA Regulations) and the Town and Country Planning (Appeals) (Scotland) Regulations 2008 (the 2008 Regulations). This evidence is argued either to be inadmissible or to require further publicity. Furthermore, the appellant's witness at the inquiry session is alleged not to have spoken to or supported the original evidence, which was set out in an environmental statement and a subsequent supplementary statement. It is claimed that this evidence points to the refusal of planning permission due to significant adverse effects. It is argued to have been unreasonable to depart from the environmental



statement without proper explanation and to have presented the case as a 'moving target'. Finally, it is asserted that certain aspects of the appellant's evidence is flawed or is inconsistent with the views of statutory bodies.

5. The appellant's evidence on landscape and visual issues and also on noise impact did evolve during the course of the appeal. However I am satisfied that any new material was presented in order to supplement rather than to replace earlier information and was a response to the reasons for refusal or criticisms from other parties including CRAG. None of this information introduced a new matter and all was made available for interested parties to respond to, in accordance with the 2008 Regulations. It is commonplace for an appellant to submit additional evidence in support of its case during the course of an appeal and, regardless of whether or not the proposal involves EIA development, I do not regard this as unreasonable behaviour.

6. The appellant's witness at the landscape and visual impact inquiry session did not abandon the evidence in the environmental statement. He made it clear that that evidence should still be taken into account, albeit supplemented by the additional material. I do not agree that the environmental statement indicated that planning permission should be refused on landscape and visual grounds, as its ultimate conclusion was that the proposal would not have unacceptable landscape or visual implications. I am also satisfied that where there was a departure from the conclusions of the environmental statement this was adequately explained. The appellant did express a willingness to amend its proposal in order to overcome any concerns I might have. However, the proposal was not actually amended in this way, so there was no additional work for CRAG in responding to revisions to the proposal. Finally, the fact that the appellant did not agree with other parties on aspects of the proposal is not evidence of unreasonable behaviour. And in the specific example given by CRAG, which was that the appellant's position on flooding was contrary to that of the Scottish Environment Protection Agency (SEPA), I do not agree that there was any significant difference of opinion.

7. CRAG also referred to some examples of unreasonable behaviour, which are set out in paragraphs 8 and 9 of the circular. I agree with the appellant that these are relevant to expense claims by and against appellants and councils rather than by third parties, for whom the circular adopts a more restrictive approach. But even if these had been relevant, I do not agree that the appeal had no prospect of success, that new matters were raised at too late a stage or that statutory procedural rules were not complied with.

David Buylła

Reporter