

Submission response to Bournemouth, Dorset and Poole Mineral Sites Plan Inspector's Matters, Issues and Questions (MIQs)

Session 19

MIQ no.135

Sculpture by the Lakes is not a cultural heritage site but a restored former sand and gravel working that the current owner has chosen as base for his sculpture manufacturing business established around 2006/7. The restored lakes happen to make it an attractive setting for the display and sale of sculptures.

MIQ no. 140

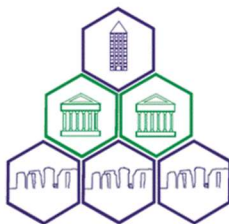
The DGs should encourage such practices and indicate that such measures will be given appropriate weight in the allocation and planning processes.

MIQ no.141

Given the above-mentioned measures, the impact on these species, if present, is thought to be negligible. Furthermore, the potential for some wet based restoration offers significant potential for improved habitat for water voles and an overall improvement in biodiversity.

Halletec Environmental Ltd on behalf of Moreton Estate

In addition to the above, Dr Peter Wardle of the Historic Environment Consultancy has provided the following comments on behalf of the Moreton Estate in relation to the Inspector's MIQ for Session 19:



The Historic Environment Consultancy

38 Elvendon Rd, Goring on Thames, Oxfordshire, RG8 0DU

Tel: 01491 875584 Fax 01491 875239

Email drpeter@historicenvironment.co.uk

www.historicenvironment.co.uk

Heritage Asset is not a synonym for a shop, a plant, ditches or even archaeological remains. This is not to say that these are not worthy of consideration by the planning system but these do not necessarily enjoy the protection of Heritage Assets. Many shops are heritage assets but the vast majority are not. Many trees are protected by virtue of being in a Conservation Area but trees outside are not. There is a separate protection regime for trees. Similarly

Hedgerows are protected by the Hedgerow Regulations 1997. Trees and Hedgerows may be historic but this does not automatically make them Heritage Assets.

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

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

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

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

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

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

It has to be accepted that in virtually every case harm to setting is regarded as less than 'substantial harm' and can thus be outweighed by Public Benefit. The NPPF notes the public benefit of mineral extraction. The decision maker in the planning balancing Act is the planning authority or the Secretary of State.

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

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

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

Dr Peter Wardle 3/9/2018