

In The Matter Of The Town And Country Planning Act 1990

**In The Matter Of An Application For Proposed Development On Land
Adjacent To Highwood Near Stone Hall Little Easton**

In The County Of Essex

**Relating To The Winning And Working Of Sand And Gravel,
Erection Of A Concrete Plant, Workshop And Ancillary Buildings And The
Importation And Treatment Of Inert Material To Produce Secondary
Aggregates And Reclamation Material For Progressive Restoration To
Landscaped Farmland And Temporary Use "B" Lodge As Offices
Associated With The Development**

**Planning Application Submitted On Behalf Of L S Easton Park Investments
Limited And SRC Limited**

**STATEMENT OF OBJECTIONS
TO THE PROPOSED DEVELOPMENT SCHEME**

**Objections Lodged on Behalf of
Mr Christopher Trembath
Of**

**Hales Farm being the owner of land immediately adjacent to the
proposed development**

**Statement of Case Prepared by
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1 Introduction

1.1 We are instructed to act on behalf of Mr Christopher Trembath of Hales Farm, High Cross Lane, Little Canfield, Dunmow, Essex CM6 1TQ who owns an area of land comprising 156 acres which includes the area of land known as "Highwood". Our specialist Planning Solicitor and Chartered Town Planner Michael Andrew Jones has prepared this statement of case incorporating the principal objections on behalf of our client and a full statement of his experience and qualifications are set out in schedule 1 annexed to this statement. The area of woodland known as Highwood is located within an area designated as a site of Special Scientific Interest established by English Nature. The area of land within the ownership of Mr Christopher Trembath is shown on plan A annexed to this statement of case and is encompassed by a bold uninterrupted black line.

1.2 In essence the proposals for development put forward in the planning application lodged on behalf of L S Easton Park Investments Limited and S R C Limited relates to proposed mineral extraction for an area comprising 120 acres or thereabouts on land immediately adjacent to Highwood and the Old Aerodrome beyond B Lodge. It should be noted that a large part of the land located within the application site comprising up to 100 acres is currently farmed under a farm tenancy by a relative being Mr Robert Trembath. Mr Robert Trembath also objects to the proposals set out in the planning application.

1.3 Mr Christopher Trembath objects to the proposals set out in the planning application on several grounds. By way of introduction the principal grounds of objection may be summarised as follows:-

1.3.1 It is considered that the proposed development which involves the removal of a substantial amount of top soil and a large amount of gravel beneath the top soil will have an adverse impact upon the local water table which will impact adversely upon the lake land area maintained by the Trembath family. It is estimated that the adverse impact upon the lake land area will involve the reduction in the amount of water passing through the lake land system and will disrupt the water falls. The lake land area is located in the small valley close to the old church at Little Easton. The lake land area forms an attractive local feature which provides a place for leisure and recreation for local people. It has significant public amenity value in association with the permissive licence allowed by the Trembath family for local people. The lake provides a fertile ground for fishing activities and also supports a wide range of local wildlife. There would be a substantial adverse environmental impact arising from any adjustment in the water table which would undermine the viability of the lake land area. Mr Christopher Trembath has retained the services of an expert hydrologist from Mott MacDonald Chartered Engineers and the concerns he has expressed on this point are echoed in that report. There are substantial concerns that the environment statement prepared on behalf of the applicant fails to fully address these particular issues. In this respect it is considered that the environmental statement lodged with the planning application is inadequate and not fit for purpose.

1.3.2 That the proposed development in close proximity to the woodland known as “Highwood” would have an adverse environmental impact upon the said woodland which is within an area designated as a site of Special Scientific Interest. The proposed development would create an extensive dust nuisance which would carry airborne particles into the woodland area and also on to adjacent land. The dust nuisance will have an adverse impact upon the various species inhabiting the woodland and upon the health of the existing woodland. The mitigation measures proposed by the applicant will not address or alleviate the problem.

1.3.3 The proposals set out in the planning application include the construction of a new road leading from the existing large roundabout which is accessed from a slip road from the adjacent A120 trunk road. The route of the proposed new road will take the road along an area of land close to the woodland known as Highwood for a substantial part of the woodland edge leading past “B” Lodge through to the old former airfield site. The road would constitute the only access to the proposed new quarry and would be used by a large number of quarry lorries. The heavily trafficked road would create a substantial noise nuisance and would also produce a large amount of fumes. The cumulative effect of these activities would have an adverse impact upon the wildlife in the woodland and upon the woodland itself.

1.3.4 A number of mitigating measures have been put forward by the applicant as part of the proposed development scheme. One of

the mitigation measures incorporates the creation of a bund to be erected around Highwood and the planting of new trees. It is considered that the installation of a bund around Highwood and the planting of new trees adjacent to the existing trees in Highwood would have an adverse impact upon the natural habitat within Highwood which would substantially compromise its status as a site of Special Scientific Interest. Furthermore, it is considered that the proposals are in part impractical in any event given the view that the proposed new tree planting scheme will inevitably fail particularly having regard to previous experience in the area.

1.3.5 There are also substantial concerns over the further mitigating measure which it is anticipated would incorporate the installation of new fencing running along side part of Highwood. It is considered that any new fencing proposals would have an adverse impact upon Highwood in that it would artificially restrict "existing wildlife corridors" and inhibit the migration of local fauna and in particular local deer. It should be noted that the migration of deer through Highwood has a positive environmental impacts and the proposed development scheme would, if implemented, inhibit such migration thereby causing harm to the environmental balance within Highwood.

1.3.6 It is also contended that the proposal development would have severe and adverse impact upon arboricultural interests generally. It is noted that the former air field area is in part comprised within a Area Woodland Tree Preservation Order. There are a number of trees which are clearly protected under

the terms of the Area Tree Preservation Order and worthy of preservation. The proposals set out in the application would inevitably lead to the loss of a significant number of such trees to the detriment of arboricultural interests. Furthermore, in so far as the development would not directly affect trees nevertheless the proposed development would have a significant impact upon the environment leading to the loss of protected trees which are not immediately affected by the initial workings under the development proposals.

- 1.3.7 It is also contended that the proposed development would have an adverse impact upon landscape interests and indeed would compromise the attractive quality of the existing landscape which in part falls within an area designated under the Statutory Development Plan as a "Special Landscape Area".
- 1.3.8 It is also contended that the proposed development would lead to the generation of unacceptable levels of additional highway traffic on the local highway network which would cause severe congestion and have an adverse impact upon highway safety.
- 1.3.9 The proposals set out in the proposed development scheme do not currently address any established existing need for aggregates of the type mentioned in the Environmental Statement. It is noted that demand for aggregates of this type has declined over the last few years and accordingly the assumptions built into the proposals are therefore challenged. It is contended that there is no overriding need for the development as proposed at this stage and that the development

essentially constitutes “unjustified and unwarranted development”.

1.3.10 It is contended that there are a large number of more appropriate and suitable sites for this form of development which would have far fewer adverse environmental impacts. It is therefore contended that a further review should be carried out into possible alternative sites for this form of proposed development before the application is considered any further. Furthermore, the search for alternative sites should be considered in the context of a reduction in the demand for this type of development.

1.3.11 It is contended that the current proposals are based upon outdated assumptions and particularly a number of assumptions built into the previous minerals plan adopted in 1996. Since 1996 there have been substantial changes in a number of material planning considerations and also in the National Planning Policy Framework relating to minerals planning. At the present time the policies relating to minerals planning in Essex County are subject to review under the new emerging minerals plan. Given the fact that the new minerals plan is reaching a mature stage in the review process it is considered that the proposals in the current planning application constitute premature proposals for development and therefore cannot be considered at this stage.

1.3.12 It is further contended that the proposed development allocates an area of land take that substantially exceeds the area originally

allocated for the proposed mineral workings within the terms of the now outdated policy allocation under the terms of the old Minerals Local Plan adopted in 1996 and accordingly the proposal set out in the planning application contravenes the terms of the said policy allocation and is therefore inconsistent with the terms of the policy set out in the Minerals Local Plan 1996. Given the fact that the proposal is inconsistent with the terms of the policy allocation it is clear that the Minerals Planning Authority is obliged to refuse the planning application on the grounds that the application falls outside the terms of the policy adopted by the Minerals Planning Authority. It should be noted that where a proposal is inconsistent with a policy statement then there is a presumption of law that the said planning application should be refused on the grounds that it is not compliant with the policy set out in the policy framework.

1.3.13 It is contended that the proposed works would lead to a substantial decline in ground water levels under the area of land known as "Highwood" which is a Site of Special Scientific Interest. The reduction in the ground water table would deprive the trees located therein from adequate supplies of ground water and this would compromise the integrity of the Site of Special Scientific Interest.

1.3.14 In the absence of a full archaeological field evaluation on the site it is contended that it would be improper for the Minerals Planning Authority to entertain the application any further. It is further contended that the proposed development would destroy any archaeological features that are present on the site

should permission be granted for the proposal. Under the Minerals Local Plan 1996 at paragraph 9.18 it is stipulated that a field evaluation is required to establish the extent, character, condition and significance of archaeological remains. It should be noted that in any planning application relating to the site there should be full compliance with the advice in Planning Policy Guidance Note 16 on Planning and Archaeology prior to any decision being made on the application. Under the terms of Planning Policy Guidance Note 16 there is a presumption in favour of the preservation of important archaeological sites. Mineral extraction can not be permitted on sites where there are areas of outstanding archaeological interest which may be affected. In the circumstances of the present case there is insufficient information within the environmental statement on this point and accordingly the proposal set out in the planning application should also be rejected on this ground in addition to the other reasons for refusal.

1.3.15 It is contended that part of the site referred to in the planning application falls within the foraging area for two badger setts. It should be noted that badgers are a protected species under the terms of the Protection of Badgers Act 1992 and accordingly any interference with badger setts in the locality is a matter of serious concern. It is contended that the proposed development will, if permitted, have a detrimental impact upon the two badger setts in the locality and will substantially disrupt their foraging area. Furthermore, the environmental statement does not contain adequate information concerning the impact of the proposals upon the local badger population. It is contended that

the proposed development would inevitably lead to the disruption of the two badger setts.

1.3.16 It is further contended that the proposals set out in the current planning application are inconsistent with Central Government Policy Guidance as set out in Minerals Policy Statement 1 issued in November 2006 and is also inconsistent with the guidelines set out in Minerals Policy Statement 2 issued in March 2005. It is further contended that the proposals are also inconsistent with Central Government Guidelines set out in Ministerial Planning Guidance Note number 6. Given the inconsistency between the proposals set out in the planning application and Central Government advice on minerals planning it is contended that the current planning application should be refused.

1.3.17 It is also contended that the proposals set out in the current planning application are inconsistent with the policy set out in the current Statutory Development Plan maintained by Essex County Council being the Essex County and Southend-on-sea structural plan for the period 1996 – 2011. It is noted that this policy document will still constitute the Statutory Development Plan up to November 2007 when it is proposed that it be replaced by the new emerging regional spatial strategy for the East of England. It is contended that the proposed development is inconsistent with the following policies of the Essex County and Southend-on-sea structural plan – Minerals policies, MIN 2; MIN 3; MIN 6; MIN 7 and MIN 8. The proposals are also inconsistent with other policies in the structural plan including policy C 5; policy NR 1; policy NR 5; policy NR 6; policy NR 7;

policy NR 8; policy NR 12; policy HC 3; policy HC 5; policy HC 6; policy BE 6; policy BE 7; policy LRT 5 and policy RE 4.

1.3.18 It is further contended that the proposals set out in the planning application are also inconsistent with policies in the emerging Regional Spatial Strategy Document which is currently under preparation and in respect of which it is proposed that it shall be introduced in November 2007. The Regional Spatial Strategy for the East of England will replace Regional Planning Guidance number 6 for Essex and Regional Planning Guidance number 9 for East Anglia. It is considered that the proposals set out in the planning application contravene the following policies within the Regional Spatial Strategy – policy SS 1; policy SS 9; policy ST 1; policy ST 6; policy E 13; policy T 1; policy T 11; policy ENV 2; policy ENV 3; policy ENV 4; policy ENV 5; policy ENV 6; policy ENV 7; policy ENV 9; policy ENV 15; policy ENV 16; policy ENV 17; policy ENV 18; policy C 5. Furthermore, with reference to appendix E annexed to the Regional Spatial Strategy which sets out the “saved” structural plan policies for Essex it is contended that the proposed development is also inconsistent with the terms of the “saved” policies in the Essex and Southend (adopted) Structure Plan in so far as the same are applicable to the site.

1.3.19 It is also contended that the proposals set out in the planning application are inconsistent with the Environmental Protection Policies set out in the Uttlesford Local Plan which was adopted in January 2005. In particular, the proposed development is inconsistent with the terms of policy S 7; policy GEN 5; policy

GEN 7; policy ENV 2; policy ENV 4; policy ENV 5; policy ENV 9; policy ENV 12; policy ENV 13.

1.3.20 It is also contended that the proposals set out in the current planning application are inconsistent with the Central Government advice set out in the relevant parts of the following National Policy Documents – Planning Policy Statement number 1; Planning Policy Statement number 7; Planning Policy Statement number 9; Planning Policy Statement number 13; Planning Policy Guidance number 15; Planning Policy Guidance number 24; Planning Policy Guidance number 25; Planning Policy Guidance number 23; Planning Policy Guidance number 16 and Planning Policy Guidance number 17.

1.3.21 It is also contended that the terms of the current planning application are also inconsistent with the guidance contained in the emerging new Minerals Development documents which are currently under preparation as part of the new “Essex Minerals and Waste Development Framework” which is being introduced pursuant to the provisions set out in the Planning and Compulsory Purchase Act 2004. It is contended that the proposed development will be inconsistent with the relevant parts of the emerging Development Control policies within the said Minerals Development documentation.

1.3.22 It is further contended that the proposed development would adversely affect the setting of a listed building and that accordingly the proposed development will be inconsistent with the Statutory Development Plan policies designed to protect the

National Heritage and the advice of Central Government set out in Planning Policy Guidance Note number 15.

In the following sections of this statement of case the objections briefly mentioned above are explored in more detail.

2. The Environmental Statement Issued by the Applicant in Support of the Application

2.1 The application for planning permission submitted to the Essex County Council being the Mineral Planning Authority responsible for the area is supported by an Environmental Statement. The Environmental Statement has been issued pursuant to the legal obligations placed upon the applicant under the terms of the Town and Country Planning (Environmental Impact Assessment) Regulations 1999 (Statutory Instrument Number 293/1999). The Environmental Statement incorporates a general statement in support of the application together with a series of supporting specialist reports on various perceived environmental impacts. It is noted in the Environmental Statement that the duration of the proposed planning permission is likely to be for a period of fifteen years. This is of course a substantial period of time and the current proposals would therefore have a significant impact over the medium term. It is noted that the Environmental Statement acknowledges that the traffic generation that may be caused by the proposed development will on average amount to 208 lorries per day but could on occasions reach the potential maximum number of 312 lorry movements per day. Access to the proposed excavation area will be afforded by a dedicated new road which will only comprise a singly carriageway that will have a number of passing places or lay-bys to facilitate the manoeuvring of heavy vehicles to and

from the site. There are no proposals for future use of the said access road after the site has been exhausted at the end of the said period of fifteen years. It is noted that there are various inconsistencies within the Environmental Statement. For example the statement indicates that whilst other parts of the County of Essex are well served by existing minerals workings in the area of Colchester, Chelmsford and Braintree nevertheless the area of North West Essex is alleged not to be well served by existing minerals workings. Curiously, the Environmental Statement does not explore in detail the existing mineral workings which currently serve the North West Essex market and particularly the Stanstead area although there is a brief but non-specific reference to the sites at Ugly, Canfield and Elsenham. However, it is noted that the Environmental Statement appears to place some emphasis upon the demands that may be placed upon the area by the need to pursue the construction programme for the proposed Olympics event which will of course be located in East London. It does appear to be rather surprising that justification for the proposed additional minerals working is put forward on this basis. Not only does the argument appear to undermine the contention that there is an alleged unmet need within North West Essex but also undermines the sustainable transport issues which were also alluded to in various parts of the Environmental Statement. Clearly, Central Government expects site for mineral workings to now be located in close proximity to the source of demand. The idea is that by ensuring that mineral working sites are located close to the course of demand that the length of journeys for lorries will be reduced substantially thereby reducing carbon emissions. Obviously, any proposal for serving the proposed Olympics development by extracting minerals from the application site would appear to be entirely inconsistent with the need to reduce

carbon emissions because it will of course involve substantial journeys along both the M11 corridor and the M25 corridor.

2.2 It is also noted that Environmental Statement recognises that the proposals put forward in the current planning application relate to a site which clearly exceeds the area referred to in the original site allocated in the Minerals Local Plan adopted in 1996. Whilst in various places the Environmental Statement seeks to rely upon the policy allocation nevertheless the proposals as currently formulated are inconsistent with the policy allocation given that the area of excess land take is currently recognised to be in the region of 13.5 hectares. In the Environmental Statement it is also recognised that this proposal incorporates not only a ten per cent increase in the extraction area but also the location of supporting operational land outside the policy area which therefore indicates that a significant part of the proposed development protrudes into open countryside outside the area allocated under the Minerals Local Plan. It is therefore contended that the proposal is as currently formulated inconsistent with the terms of the Minerals Local Plan adopted in 1996. This is a significant point because the implication is that the proposal incorporates development inconsistent with the Statutory Development Plan in that it proposes development which is unjustified and located in open countryside subject to the full rigor of the policies in the Statutory Development Plan designed to protect and preserve the open countryside from unnecessary development. When one considers the terms of paragraph 3.21 of the Environmental Statement one notes that the area of the “preferred site K” is stated in the Minerals Local Plan as being 40 hectares. The application site of 53.5 hectares incorporates an additional area for mineral extraction of 4 hectares constituting the ten

per cent increase mentioned above. In addition there is an area of land allocated for supporting operational activities including the access corridor which includes the road leading from the roundabout past "B" Lodge. It is noted that the "B" Lodge is to be converted into an office complex for the management of the site. A substantial area is also allocated for engineering works in support of the scheme. Whilst the Environmental Statement seeks to demonstrate that this breach of the policy guidelines will not have any significant impact nevertheless having regard to the sensitive location of the proposed development it is considered that any variation from the policy allocation is a serious matter. It must be remembered that the proposed development is located in close proximity to an existing site of Special Scientific Interest located at "Highwood".

2.3 Curiously, the author of the Environmental Statement appears to be unclear as to the reason for the allocation of the eastern boundary of the preferred site. This is rather puzzling given the importance of this particular proposal and the need to have full and clear information on all of the relevant issues. Whilst the author explores a number of potential reasons for the location of the eastern boundary of the policy area nevertheless the author does not come to a conclusion on this important point. Curiously, the author of the report makes the bold assertion that "there are no hydro geological issues as the ground water is some 10 metres below ground surface with the woodland trees being reliant solely on surface water". This particular assertion cannot have any possible cause or link with the location of the boundary and does not appear to be justified by reference to a detailed analysis of the hydrology of the area. A further bold assertion is put forward namely that "the perimeter bunds will remove any risk of airborne dust". This

further assertion does not appear to have any substance and does appear to be a very bold claim which cannot be justified. On a point of principle it is of course curious to note that the Environmental Statement is yet again putting forward an inconsistent argument. On the one hand it seeks to claim that the proposals are in part supported by a policy in a now rather outdated Minerals Local Plan of 1996 and yet at the same time seeks to justify in part a departure from the policy allocation in that outdated plan. At the same time it is noted that the Environmental Statement recognises that the Minerals Local Plan of 1996 is now to be replaced by a new Minerals Development Document but seeks to undermine the status of the said new emerging policy document indicating that the applicant cannot wait for a further short period of time until the new Minerals Development Document is adopted. This is a rather surprising assertion given that it will only be necessary to wait for a period of approximately between twelve and eighteen months for the new Minerals Development Plan to become the new policy framework. Given that the existing allocation for part of the application site for minerals working has been extant for a period since 1996 it is surprising that a further short period of twelve to eighteen months would cause significant difficulties at this stage. Our client is rather concerned to note the position adopted by the applicant and takes the view that if the applicant had confidence in its case for the current proposals it should have no difficulty in allowing those proposals to be scrutinised again within the context of the new emerging Minerals Development Document. One could be forgiven for thinking that the applicant wishes to pursue this application promptly for the purpose of seeking to obtain a planning permission before the new up to date Minerals Development comes in to affect.

This raises a number of additional questions which obviously have serious implications.

2.4 Our client considers that the people affected by the proposals set out in the current application should be afforded the opportunity to have their objections considered in the context of a up to date review of the extent of current demand for mineral workings in the area and the current availability of alternative sites that may have fewer adverse environmental impacts than the current site. Furthermore, it is considered that the Minerals Planning Authority should also take into account the need to carry out the periodic review into the existing mineral planning permissions in the area in accordance with Minerals Planning Guidance Document number 14. In this respect reference should be made to the initial review programme undertaken within the County of Essex by the Minerals Planning Authority were it was noted that of those 38 active and dormant minerals sites reviewed as part of the initial review it was noted that owing to boundary changes 7 of the sites are now located outside the current administrative area of the Minerals Planning Authority thereby indicating that the previous assessment of the position which formed the basis of the previous Minerals Local Plan in 1996 should be thoroughly reviewed in any event. Nevertheless, it is considered that the assumptions upon which the Minerals Local Plan adopted in 1996 were based have now been undermined by various changes that have taken place since 1996 thereby necessitating the need to take into account a thorough review of the current question of need and demand for sand and gravel extraction. With reference to the initial review the following points appear to be particularly pertinent in the current context:

“Of the remaining 31 sites it would appear that 4 sites are currently dormant with no mineral development having been carried out at any time from the period from 22nd February 1982 to 6th June 1995; 13 new sets of planning condition have been agreed; 2 initial review applications remain under consideration; 7 permissions have been superseded by later permissions; 4 sites have completed their extraction life and one site has been relinquished in favour of a new site.”

It is curious to note that there are no references to these points in the Environmental Statement. Indeed, it is significant that the Environmental Statement appears to avoid any issues relating to the availability of alternative sites that may have fewer adverse environmental impacts than the current site. This does appear to be a glaring omission from the Environmental Statement which has a number of legal implications. Clearly, an Environmental Statement must comply with the Town and Country Planning (Environmental Impact Assessment) Regulation 1999 as Amended by the 2000 Regulations. It should also incorporate the information specified in schedule 4 to the said Regulations. At the present time it would appear that the details set out in the current Environmental Statement do not satisfy the specific requirements set out in Schedule 4 to the 1999 Regulations. For example:-

- a. The terms of the current Environmental Statement do not contain an “outline of the main alternatives studied by the applicant”.
- b. The current Environmental Statement does not appear to contain any “description by the applicant of the

forecasting methods used to assess the affects of the environment”.

With reference to the view adopted by the Courts to Environmental Statements reference should be made to paragraph 1 to 2 of the Judgement of Mr Justice Sullivan in the leading case of R –v- Rochdale Metropolitan Borough Council ex parte Milne (2001) ELR page 22 in which is was stated that “in assessing the likely affects, it is entirely consistent with the objectives of the Directive to adopt a cautious “worst case” approach. Such an approach will then feed through into the mitigation measures envisaged under paragraph 2(c). It is important that they should be adequate to deal with the “worse case”, in order to optimise the affects of the development upon the environment”. It is clear from that Judgement and from the regulations that one needs “full knowledge” of the likely impacts upon the environment of the proposed scheme which is the subject of the Environmental Statement. Accordingly, the Minerals Planning Authority is entitled to require full details in the Environmental Statement before entertaining an application and in the absence of full details is entitled to refuse permissions.

In a number of cases the Courts have been obliged to quash decisions of local planning authorities where the Courts were satisfied that there were failures on the part of both the applicant and the local planning authorities to comply with the requirements set out in the 1999 regulations. An example of such a case is the leading case of R –v- Cornwall County Council ex parte Hardy (2001) ELR page 25.

It is considered that the absence of any analysis of alternative site availability at this stage is a significant omission from the Environmental Statement and which taken together with the other points of inconsistency within the Environmental Statement lead to the conclusion that the current Environmental Statement is not compliant with the terms of schedule 4 to the 1999 regulations.

The Courts have placed considerable importance on the issue of alternative sites and accordingly reference is made to the relevant case law.

2.5 It is clear that the issue of adverse Environmental Impacts is an important point in this particular case. For example if one considers the terms of the most recent National Policy document being Minerals Planning Statement number 2 it is clear from paragraph 4 thereof that applicants are encouraged to “ensure Environmental Impacts of mineral operations are kept to an acceptable minimum. Furthermore, there is a recognised need to protect areas of nationally designated landscape or nature conservation from mineral development other than in exceptional circumstances in the public interest. This is an important issue given the proximity of the site of Special Scientific Interest known as “Highwood”.

2.6 With further reference to Minerals Planning Statement number 2 it should be noted that in paragraph 8 of the statement it is clearly emphasised that in the Environmental Statement one should always ensure that all of the environmental impacts are fully understood before planning permission is granted. It has to be said that in this case it would appear that the Environmental Statement does not

demonstrate that there is a full exposition of all the relevant facts and circumstances and accordingly planning permission ought not to be granted. It is considered that having regard to the numerous omissions from the statement that in essence effective mitigation of the adverse and unacceptable environmental impacts is not possible. Reference should be made to paragraph 18 of Minerals Planning Statement number 2 which states that where effective mitigation is not possible then planning permission should be refused. There are numerous issues relating to adverse environmental impacts which have not been addressed in the Environmental Statement. Various examples can be put forward relating to this particular issue.

2.7 If one examines the “reptile and amphibian survey” undertaken by “Eco-planning UK” which is incorporated in volume 2 of the Environmental Statement it will be noted that the report acknowledges in the section on “survey technique” that the reptile survey for the site took place over 5 separate site visits during the month of July 2006. Significantly it should be noted that all of the visits took place in the same month during days which were warm, rain free and with early morning sunshine. Although the author of the report claims that these conditions constituted “good weather” for spotting “cold blooded” species nevertheless this approach is unsatisfactory and it is considered undermines the results of the survey. It should be noted that surveys undertaken at the height of summer such as during the course of July invariably fail to obtain a full record of the reptile population in the area because in warm weather conditions the reptiles are able to move more quickly than at other times of the year. By moving more quickly the reptiles are able to more readily avoid observation. It should be noted that the more acceptable practise in reptile surveys is for surveys

to be carried out at different times of the year and more appropriately during the late autumn and winter months when the reptile will be incapable of avoiding observation. Given the rather surprising decision of the authors of the survey to concentrate their observations purely in the month of July serious questions therefore arise concerning the accuracy of the findings in the survey and upon which the conclusions are drawn. It is considered that the habitat survey is insufficient and cannot form the basis of a rational decision. In this respect it should be known that there are analogous decisions relating to surveys concerning reptiles which have been considered by the Planning Inspectorate and reported in similar cases. For example a recent decision which is referenced under DCS02100.046.633 related to a similar case where a habitat survey of reptiles carried out in the summer months was found to be an inadequate and insufficient survey upon which one could formulate a planning decision. It was clearly noted in the decision letter that the survey of reptiles taken in the summer months failed to fully record the reptile population given that reptiles are more difficult to locate during warm weather. Clearly, the findings reported in the Environmental Statement concerning this relatively straight forward issue are therefore unjustified. This is obviously an important issue in so far as the policies set out in the Planning Policy Statement number 9 on Nature Conservation are concerned. It is an important material planning consideration and it would appear that the Minerals Planning Authority is not being provided with the full and transparent information which it requires in order to formulate a sound planning decision.

2.8 There are also serious questions arising out of that part of the Environmental Statement which relates to hydrological issues. Clearly,

issues relating to the water environment are an important material planning consideration particularly in relation to minerals planning applications. For example is one considers the National Planning Guidance contained within Minerals Planning Guidance Note number 1 one notes that at paragraph 52 that it states that:-

“There is a substantial body of legislation in relation to water supply and drainage. The legislation includes National Legislation to implement the 1980 EC. Groundwater Directive (80/68/EEC), and in particular the provisions of the Water Resources Act 1991. Minerals Planning Authorities and the industry must take into account the need to protect the flow and quality of surface and groundwater supplies in accordance with the legislation and ensure that changes in the water table as a result of mineral extraction do not cause unacceptable danger to the water environment, particularly water sources.”

2.9 Furthermore, the guidance in Minerals Planning Guidance note number 1 states at paragraph 58 that the impact on aquifers and groundwater, is a material planning consideration in determining applications for individual sites. It is also stated in paragraph 62 of the same planning guidance note that minerals planning authorities must still consider sites which are located outside those allocated in the formal Minerals Local Plan because such sites can significantly change the overall context of the plan. In other words that the continuing search for alternative sites should always continue on a rolling basis and the plan should in essence be kept under constant review. This important National Policy Statement issued by Central Government clearly indicates that the assumptions made in the Environmental

Statement on behalf of the Applicant are misplaced. One cannot assume that a site which is allocated in a Minerals Local Plan should continue to remain in that Local Plan and that no account should be taken of alternative sites which come forward during the Plan period. This is an important issue particularly having regard to the hydrological issues mentioned above. If one examines the hydrology report prepared by Haffron Water issued in November 2006 and which is enclosed with volume 2 of the Environmental Statement one notes that there are a number of problems with the report. It should be noted that the mechanisms that permit the lakes near Little Easton Church to exist are not clearly defined or apparently understood in the Environmental Statement. Whilst the basic conceptual model employed in the Environmental Statement is a reasonable approach nevertheless the Environmental Statement makes several confusing and contradictory statements about the flow regime into the lakes. The proposed mitigation measures for construction and operation are too loosely defined and it is clearly appropriate for the owner of the lake to deem the mitigation measures proposed unacceptable. Furthermore, it is not normally considered appropriate to defer any detailed examination until after planning permission has been granted unless this approach has been agreed with the persons responsible for maintaining the lakes and the attendant risks fully identified in the Environmental Statement. Clearly, this would not appear to be the case in the present proposals.

2.10 The lakes are fed by sub-surface water as indicated by the water flowing from the pipes at the lakes. However, it is not certain that this comes directly from the Kesgrave Sands and Gravels, as indicated in the Environmental Statement. It is considered that the local hydrogeology

may be influenced by the presence of periglacial head deposits which are not mentioned in the Environmental Statement. The extent and hydrogeological properties of these deposits are poorly understood and accordingly their significance to the hydrology of the Little Easton Lakes is not known. The interplay between surface water runoff, interflow and ground water flow should be more fully understood to enable the final mitigation measures to be designed with some confidence.

2.11 It should be noted that the proposed mitigation measures put forward on behalf of the applicant do not guarantee the future functioning of the lakes because they could be at risk of contamination during gravel workings. The methods of controlling flow rates are not defined in the Environmental Statement. Similarly, once restoration has been completed the Environmental Statement makes no attempt to predict the impact of the proposed mitigation upon the lake functions. Any prediction should consider both risks for the full range of the water cycle (that is, low flow and flood conditions, as well as the normal situation) and should be carried out for the period of gravel works and the subsequent restoration period. This is a substantial weakness in the Environmental Statement as it is currently drafted.

2.12 Given the above points it is considered that local sub-surface conditions should be investigated more closely. It is possible that lithological information can be obtained from Borehole H/2000/15, which is closer to the lakes than Borehole C. However, one or more shallow boreholes or trial pits adjacent to the lakes could permit a more accurate assessment of the hydrogeological conditions around lake number 1.

2.13 The water balance of the lakes also needs to be more carefully considered because there appears to be a potential problem that could arise in wet years whereby ground water inflow from the restored gravel pit in conjunction with surface water flows could accentuate flood risks. The risk assessment should consider the travel times of ground water from the proposed recharge trench and the occurrence of rain fall contributing to surface runoff.

2.14 Furthermore, it should be noted that a detailed plan for the augmentation of the lakes with water from the extraction works is required for all stages of the proposed development. It is suggested that this should be more robust than simply stating that a constant feed of water into lake one would occur.

2.15 It should also be noted that careful design is required to ensure that lakes will receive enough water on a sustainable basis and particularly after management of the excavation site has come to an end. This should be established prior to any proposed planning permission and the mechanisms agreed on how to proceed if the mitigation works fail to work as originally proposed.

2.16 In essence there are serious defects in the hydrology report and in the Environmental Statement generally concerning issues relating to the hydrology of the lakes. It is surprising that no comment is contained in the report relating to the geology in the area of the lakes. Clearly, if an examination had been carried out into the terms of the geological map (BGS, sheet 222, 1990) it would be clear that the geological succession is different in the vicinity of the Little Easton Lakes. The London clay and in places the Kesgrave Sand and Gravel have clearly been eroded to

produce the Head deposits. It should be noted that the hydrogeological properties of head deposits in this region are poorly understood. It is surprising that the importance of the presence or absence of Head deposits around the lakes is not commented upon in the report. One would have expected this to have been explored in some detail within the Environmental Statement.

2.17 It is interesting to note that the ground water level has not been measured close to the lakes in the report. The nearest known ground water level is about 75 metres away and it also appears that the lake levels have not been surveyed. Without taking these steps it is difficult to see how the author of the hydrology report could understand the true connection between the lakes and the ground water. It should also be noted that it is simply not true that closely spaced contours indicate discharge. Discharge areas would actually be indicated by contours with a "V" showing flow is occurring into the "V" shape. Closely spaced contours simply indicate different aquifer characteristics occur in this area than in areas with more widely spaced contours (for example, the formation could be changing from one with low permeability (steep gradients) to one with high permeability (shallow gradients)).

2.18 With reference to the proposed water balance for the lakes the hydrology report prepared by Haffron Water appears to calculate an approximate ground water flow through the sand and gravel to estimate the relative contribution of ground water to the Little Easton Lakes but basis the calculations on estimates parameters which are unjustified. There is no analysis as to how the hydraulic gradient and the aquifer width were estimated. The one thousand five hundred metre estimate of aquifer width does not reflect the actual width that is likely to flow through the

area of the lakes. There is a surface water ditch extending from Highwood to the south east of the extraction site which feeds the southern lake known as lake number 1. It was dry at the time of Haffron Waters site visit on 21st April 2006. Thus on page 5 of the hydrogeological investigation it is concluded that the lakes can be supported entirely by ground water. However, in their summary and conclusion section at page 19 of the hydrology report annexed to the Environmental Statement it is concluded that, because of the size of the stream catchments and the low permeability of the near surface geology, the volume of surface water supporting the ponds is likely to be many times that of the ground water. This contradiction clearly does not provide confidence that the overall conclusions have been reached through a thorough assessment of the site conditions.

2.19 The Environmental Statement indicates that during the proposed site operation the de-watering of the Kesgrave Sand and Gravel would have to occur. It is proposed that de-watering discharges will be pumped into the surface water ditch that discharges into lake number 1 thereby augmenting the lake levels. It is assumed that the quality of this water will be comparable to that entering the lakes at present but there is no evidence presented to substantiate this claim. This should in fact be very easy to prove by taking ground water samples and samples from the lakes and assessing the major ion chemistry of each (eg by plotting them on a tri-linear plot). There is a risk that de-watering water from a working excavation could be severely contaminated by spillages from plant or by silt. There is some limited discussion in the report about how such risks would be controlled in the brief discussion about augmenting the ponds during the operation of the works.

2.20 The mechanism for augmentation during construction has not been fully disclosed in the Environmental Statement. It is not clear how the correct amount of water could be transferred to the lakes during the periods of differing rainfall throughout the year. The water level in lake number 2 being the horse pond is very dependant upon the water level in lake number 1. It is therefore critical for the rest of the lake system to maintain an adequate water level in lake number 1 and the method of doing this should be presented in the Environmental Statement where a reference should be made that agreement with the person managing the lakes must be obtained prior to any works commencing. Equally important is the need to discuss how in periods of extremely wet weather the working areas are kept dry without placing the lakes at risk of over flow. Clearly, this could affect flood risks down stream of lake number 1.

2.21 After the gravel works are complete the placement of over burden and imported inert material within the worked out quarry would clearly modify the hydraulic properties of the sand and gravel aquifer and the ground level contours. It is assumed there would be a general increase in ground water levels to the west of the extraction site and a decrease to the east but this is not quantified in the assessment. Over time the gradients should achieve a steady stayed condition but this is not discussed in the Environmental Statement.

2.22 The Environmental Statement stresses that the final elevations of the restored land form have been designed specifically to mitigate the impacts of the proposals upon the local water environment. However, the design is not supported by any water balance calculations to prove that it would actually work. It is proposed in the report that the impacts

on ground water will be mitigated by the provision of a re-charge trench in the northwest corner of the site. The landform will be contoured such that rainfall from approximately forty per cent of the site will be conveyed to the re-charge trench. The report should have quantified the anticipated recharge from the site through the recharge trench. Again, using an effective rainfall figure of 150mm one hundred per cent infiltration (as all rain/runoff is directed into the trench) and forty per cent of the 53.5 hectare site would imply that the recharge would be in the order of 32,100m³/YR. This is substantially different to the 21,000m³/YR suggested as an outflow from lake 1 from information contained in the Environmental Statement (the 21,000m³/YR is based on flow results in the Environmental Statement averaged over 2006).

2.23 The report makes no mention that once completed; proactive water management will not be possible. Thus there will be no mechanism to ensure that lake levels remain as they are today. This is again another significant weakness in the report which obviously fails to demonstrate how one can ensure the long term viability of the lakes.

2.24 Clearly, given the above observations there are a substantial problems with the approach to the hydrology issues in the Environmental Statement and it is considered that the defects in the Environmental Statement identified above clearly indicate that the Environmental Statement fails to address the relevant adverse environmental impacts in a sound scientific way. Given these defects and the absence of the information required under the terms of schedule 4 of the 1999 Regulations it would appear that no reliance can be placed upon the Environmental Statement. Given the absence of any reliable environmental statement it is therefore clear that the Minerals Planning

Authority cannot continue to entertain the current planning application and must therefore reject the proposals now placed before it.

2.25 In further support of these contentions we would also refer to the guidelines contained in Minerals Planning Guidance Note number 6 on the "Guidelines for Aggregates Provision in England". Whilst it is recognised that this policy document is somewhat outdated given that it was introduced in 1988 nevertheless some of the advice set out in the planning guidance note is still applicable today. For example in paragraph 72 of the Guidelines it is stated that where a minerals planning application will have an impact upon a site of Special Scientific Interest then the application must be subject to "very rigorous examination". Furthermore, in paragraph 79 of the same guidelines it is stated that in considering individual minerals planning applications of this nature one must consider all material issues including economic issues, environmental issues, nature conservation issues, agricultural issues, landscape issues, traffic issues and the implications for site restoration.

2.26 Planning Guidance Note number 6 states in paragraph 80 that one must always assess minerals planning applications in the context of an examination of the true balance of the real need for the development and the true supply of sites at the time that the application is considered. With reference to the principal of land banking the guidelines clearly state that the minerals planning authority must roll out and spread the release of the land bank evenly over the plan period. There is evidence that the current proposals do not conform to that particular advice. Under the terms of paragraph 83 of the Planning Guidelines it is clear that the Minerals Planning Authority must recalculate and reassess at the

time of this application any current demand for additional mineral planning sites of this nature in the context of the need to apportion the release of land evenly.

2.27 In the Environmental Statement there is a reference to the measures that would be adopted for the purpose of reducing the amount of dust nuisance emanating from the site. However, the Environmental Statement does not address the specific points set out in annex 1 of Minerals Planning Statement Number 2 which specifies the expected measures for mitigating dust problems using the best available techniques. There is no specific reference to the study issued by Ove Arup entitled "The Environmental Affects of Dust from Surface Mineral Workings" (HMSO 1995). The Environmental Statement should actually specify the current best practise for attending to dust assessments and dust mitigation measures. Best practise requires a formal dust assessment study to be issued followed by the preparation and issue of a dust action plan which should deal with all aspects of dust nuisances and not merely issues which focus upon internal site arrangements and the use of water treatment. It is considered that further information is required in an Environmental Statement before this matter can be addressed further.

2.28 The information relating to the question of noise disturbance is also considered to be insufficient particularly having regard to the advice set out in Planning Policy Statement number 24 on "Planning and Noise". There is insufficient information concerning the mitigation measures required. Whilst acoustic screening can be proposed nevertheless any proposals need to be supported by detailed models indicating the noise attenuation that can be achieved over a given area. It is considered that

the proposals for the use of “baffle bunds” would not be sufficient in the present circumstances. Specific evidence relating to an appropriate model compliant with British Standard 5228 relating to noise control on an open site is but one of the stages one must tackle during the course of any process for assessing the extent of noise disturbance. There is insufficient information in the Environmental Statement to support any conclusion concerning the impact of noise emanating from the site. This is a very significant issue given that the site will in effect operate from 6.00am in the morning through to 6.00pm in the evening. One must take into account the number of sensitive receptors within the vicinity of the application site.

2.29 The Environmental Statement also contains very little information relating to the assessment of the impact of the development upon the landscape. It should be noted that in paragraph 5.6 of the Environmental Statement one finds a rather surprising assertion that “the site has little in terms of landscape resource”. This rather bold statement sits uneasily with the general view held in the locality that the area of land in question forms part of an attractive landscape area. This is reinforced by the policies in the Statutory Development Plan which clearly incorporate various policy designations designed to protect the landscape in the area. The fact that part of the area is located within a Special Landscape Area clearly indicates that there is a valuable landscape to be protected. It should also be noted that there are many public viewing points in the area from which large parts of the proposed development site can be observed. It is simply incorrect for the Environmental Statement to incorporate the assertions stated in paragraph 5.9 that “the site is very well contained and the majority is hidden to views”.

2.30 With further reference to the ecological survey relating to badger setts it should be noted that whilst the Environmental Statement recognises that there are two active badger setts nevertheless it concludes that the foraging area for the badger setts is in adjacent woodlands and would not affect the application site area. However, this finding is disputed because there is evidence that the foraging area for one of the very large badger setts in the area indeed covers a large part of the application site area.

2.31 Given our general observations relating to the Environmental Statement we consider that the Environmental Statement cannot be considered as a document that is soundly based and we would therefore ask that no account be taken of the Environmental Statement and that the application for planning permission be refused.

3. Precedent as a material planning consideration

3.1 It should be noted that precedent is a material planning consideration which needs to be taken into account in circumstances of this nature. Clearly, the Courts have previously held that planning permission may as a matter of law be refused on the grounds of the possible precedent that may be caused by the decision. Reference should be made to the case of Collis Radio Limited –v- Secretary of State for the Environment (1975) 29PCR page 390 and also to the case of Anglia Building Society – v- Secretary of State for the Environment (1984) JPL page 175. It therefore follows that precedent by itself would be a sufficient reason for justifying the dismissal of the current appeal.

3.2.1 The issue of precedent is extremely important in cases such the proposals for the extraction of minerals. Clearly, if an application

were to be allowed in circumstances of this nature where there are a number of significant problems which would be caused by the proposed development then clearly any decision to allow development in such circumstances would be cited by other developers in the locality who also sought similar forms of development. Furthermore, given the severe and adverse environmental impacts that would be caused by the present proposals set out in the current planning application the Minerals Planning Authority would, if the present application were permitted, encounter considerable difficulty in resisting applications for similar forms of development which would also have adverse environmental impacts. This is a serious issue because this process would lead to the incremental erosion of development control within the locality which would have an adverse impact upon the character of the area and lead to an overall reduction in environmental quality around Dunmow. Clearly, decisions which have an adverse impact upon the character of the area constitute important decisions and it therefore follows that this is an issue which must be taken in to account under the Law and Practice governing precedent.

4 The question of need and use of alternative sites

- 4.1 Given the special circumstances relating to the current case it is clear that consideration should be given to the question of need for the proposed development and indeed the possible availability of alternative sites. It is noted that the current application puts forward a formal development which is inconsistent with the policies set out in the Statutory Development Plan and also exceeds the area of policy allocation set out in the now somewhat outdated Minerals Local Plan adopted in 1996. It should be noted that that there are already 31

active mineral extraction sites within the county of Essex which clearly provides a substantial source of minerals within the county. It should be noted that within the market there has been a general downward trend in demand for aggregates of the nature proposed in the current planning application. Given the substantial number of existing active sites and the absence of any demonstrable increasing or exceptional demand for such minerals one must question the assumption that the current planning application is based upon a sound and demonstrable need for additional minerals. In this respect reference should be made to a number of documents issued by the Minerals Planning Authority including the following:-

- a. The annual monitoring report for 2004 issued by the East of England Aggregates Working Party (EoE RAWP) (2004 Data) – attention is drawn to paragraph 4.5 in which it is stated that during 2001 six applications for sand and gravel extraction were approved involving saleable materials in the region of 2.98mt. However, two of these permissions, borrow pits for major road schemes in the county, were stated as not required for implementation because they were not needed by the road contractors.
- b. The annual monitoring report issued by Essex County Council on minerals and waste for the period from 1st April 2005 to 31st March 2006 (published December 2006). Attention is drawn to paragraph 7.5 of the report which refers to the annual number of sales of aggregate within the county of Essex which has been in decline since 2002. Attention is also drawn to the land bank provision which indicates that there is currently 11.5 years of supply available on the basis of the current assessment. This

clearly exceeds the target supply figure of 7 years for the land bank.

It is therefore contended that taking in to account the information set out in the monitoring reports there is currently no demonstrable need for the proposed development. Furthermore, it is noted from the reports that there is some concern over the availability of data for formulating sound planning decisions. It would appear that officers dealing this area of work do not consider that they have sufficient information upon which to make forecasts. In the absence of the required amount of information to make forecasts it would appear that there is no evidence of a clear demonstrable need for the development to address any alleged increase in demand in the near future. Given the absence of any demonstrable and pressing need for the development one technically need to consider the issue of alternative site provision. However, without prejudice to the contention that there is no overriding need for the development, consideration will now be given to the issue of the availability of alternative sites. It is contended that there are a number of alternative sites and an indication of the number of alternative sites can be obtained from an examination of the terms of the existing Minerals Local Plan of 1996 and the subsequent monitoring reports issued by the Minerals Planning Authority together with the review of the availability of sites contained within the reports issued by the East of England Aggregates Working Party. Furthermore, consideration should in the first instance be given to the extension of existing active sites which are referred to in the monitoring reports issued by the Minerals Planning Authority and also to the extension of the existing life of such current active sites where possible. The current planning application does not contain any analysis of these issues.

Clearly, if there is an alleged overriding need for the proposed development (which is not accepted) then the issue arises as to whether that need can be addressed by the use of alternative sites in circumstances where the alternative sites will not have the same adverse environmental impacts which may be caused by the proposals set out in the current planning application. At this stage it is necessary to give consideration to the legal issues relating to alternative site provision.

1. The specific legal points relating to the availability of alternative sites for the proposed development include the following:-

a) It is clearly established by Case Law that in considering planning decisions a decision maker should take into account the availability of alternative sites for the proposed development scheme assuming there is of course a need for the development in the first place. It is contended that without prejudice to the initial submission namely that there is no need for the development now proposed, nevertheless there are a large number of alternative sites where the development could be located once a need is eventually established. In this submission we also examine the question of need and we put forward the proposition that there is no demonstrable overriding need for the proposed development.

b) It is clearly settled Law that there is a requirement to take into account comparable sites when considering a specific proposal where:-

- I. There is a clear inevitable adverse impact arising from the proposed development to the public.
 - II. And it is clear that there is an alternative site for the same project which would not have the same effects.
- c) It is considered that it is possible for the particular need for the facility proposed at Little Easton can be satisfied elsewhere. Case Law even indicates that such considerations can be taken into account even though no other specific sites are identified and established as preferable alternatives. In the notable case of *Trusthouse Forte Hotels Ltd. -v- Secretary of State for the Environment* (1986) 53 P & CR Page 293 the following propositions were put forward by the Court:-
- I. In the case where planning objections are sought to be overcome by reference to need, the greater those objections, the more material will be the possibility of meeting the need elsewhere.
 - II. Although generally speaking it is desirable and preferable that a planning authority (including, of course, the Secretary of State on appeal) should identify and consider that possibility by reference to specifically identifiable alternative sites, it will not always be essential or indeed necessarily appropriate to do so.
 - III. The clearer it is that the planning objections relate essentially to the development of the application site itself rather than to some intrinsically offensive aspect of the proposed development wherever it

might be sited, the less likely it is to be essential to identify specific alternative sites.

- IV. Equally, the less specific and exacting are the requirements to be satisfied in order to meet the accepted need, the more likely it is that a planning authority could reasonably conclude that such a need can be met elsewhere without reference to some identifiable preferable alternative site.
- V. Clearly, it is more difficult to make a sensible comparison in the absence of an identified alternative site and it is that a planning authority would be more hesitant in concluding that an accepted need could be met elsewhere if no specific alternative sites have been identified, a fortiori if they have been carefully searched for, identified and rejected.
- VI. The extent to which it will be possible for the developer to establish that such a need can and should be met elsewhere will vary. However, in cases such as the present, when the green belt planning policy expressly provides that “the need for a motel on the site proposed, not merely in the area generally, has to be established in each case” (para.16 of *Development Control Policy Note 12*), the burden lies squarely upon the developer. Thus in this type of case it will be more likely that the planning authority could reasonably conclude that the need can be met elsewhere without reference to some identified more appropriate site.

VII. As a matter of law it is accordingly open to a planning authority to conclude on the facts that an accepted need can and should be met elsewhere than upon the application or appeal site without reference to any specific alternative site or sites.

d) In *Secretary of State for the Environment –v- Edwards* [1994] 1 P.L.R. 62, it was held that the relevant criteria were:

- (i) The presence of a clear public convenience or advantage in the proposal under consideration;
- (ii) The existence of inevitable and adverse effects of disadvantages to the public, or to some section of the public;
- (iii) The existence of an alternative site for the same project which would not have those effects, or would not have them to the same extent; and would not have those effects, or would not have them to the same extent; and
- (iv) A situation in which there could only be one permission granted for such a development, or at least only a very limited number of permissions.
- (v) Given the above propositions it is clear that there is a clear need to examine alternative sites having regard to the problems that would inevitably arise should the development be permitted on the application site.

4.2 Given the above points it is contended that in the present case the current application site should not be developed and that the proposal for sand and gravel extraction should take place elsewhere.

5. Central Government guidance on minerals planning

5.1 Central Government guidance relating to minerals planning is set out in a series of minerals planning policy statements and mineral planning guidance notes. The general provisions are set out in the primary document being the Ministerial Planning Statement number 1. This is supplemented by Ministerial Planning Statement number 2 and both statements will be analysed in the subsequent paragraphs within this section. In general terms it should be noted that where minerals planning applications have an impact upon ground water then it is necessary for the Minerals Planning Authority to take in to account the substantial body of legislation relating to water supply and drainage. The legislation includes national legislation which has implemented the European Ground Water Directive (80/68 EEC). Regard must also be had to the provision set out in the Water Resources Act 1991. Clearly, the Minerals Planning Authority must take in to account the need to protect the flow and quality of both surface and ground water supplies in accordance with the legislation and should also ensure that changes in the water table as a result of mineral extraction do not cause unacceptable changes to the water environment and in particular to water sources. Unfortunately, the proposals in the current planning application will have an adverse impact upon the water resources in the vicinity of the site including the area close to Little Easton Church and the Lakeland area and also to the area upon which Highwood stands being the site of Special Scientific Interest. Clearly, the Minerals Planning Authority must take in to account the impact upon the

aquifers and the ground water system in accordance with ministerial planning advice.

5.2 It should be noted that under ministerial planning advice Minerals Planning Authorities are entitled to consider the possibility of the development of sites outside areas allocated within the Minerals Local Plan for mineral development. It is considered that other sites outside the policy allocation can significantly change the overall context in which the plan was originally prepared. It therefore follows that Central Government advice encourages a flexible approach to the assessment of sites that could be considered available for mineral extraction. This process in itself has implications for those sites currently allocated for mineral extraction under the current Minerals Local Plan. It is clearly stated in ministerial advice that the Minerals Planning Authority must take in to account any adverse impact put forward in a planning application of a mineral extraction upon the interests of forestry, the need to preserve good quality agricultural land, the need to preserve and protect the water environment, the need to protect Sites of Special Scientific Interest, the need to protect an environmentally sensitive area, the need to protect veteran trees and area tree preservation orders, the need to protect landscape interests including historic and special landscape interests and the need to minimise any adverse environmental impacts generally. Furthermore, Minerals Planning Authorities are encouraged to consider the highways implications of any particular proposal for mineral extraction and must also take in to account the credibility of any proposals relating to restoration of the land after the extraction process has been completed.

5.3 Ministerial advice also clearly indicates that with reference to aggregate provision in England it is necessary to scrutinise such applications very carefully particularly if they affect a Site of Special Scientific Interest. Any application that may indirectly affect a Site of Special Scientific Interest will be subject to very vigorous examination. Furthermore, ministerial advice encourages Mineral Planning Authorities to consider all material issues including those that are economic, environmental, relevant to nature conservation, relevant to the need to preserve agricultural land and related subjects.

5.4 Minerals Planning Authorities are also encouraged to assess the real need for the proposed mineral extraction proposal in the context of the existing market conditions and the general availability of aggregate supplies within the county. Accordingly, the Minerals Planning Authority must consider the current application by balancing the assessment of the true extent of existing unmet need and the existing extent of current supplies. Furthermore, the Minerals Planning Authority should ensure that any land bank of mineral sites is released evenly over the period of the plan. It is considered that the current planning application does not fall within this particular guideline. It should also be noted that Minerals Planning Authorities are encouraged to re-calculate and reassess at the time of each application the exact level of demand for aggregate as compared with the exact level of current available supplies. The Minerals Planning Authority must not assume that the existing Minerals Local Plan is still correct. In other words it is necessary to re-visit the economics of the proposal in any event. It is considered that in the light of changes in market conditions there is no demonstrable need for the current proposals.

5.5 In Minerals Planning Statement number 2 it is stated in paragraph 4 that one must ensure that the environmental impacts of any proposed minerals operations are kept to an acceptable minimum. It is also recognised that it is necessary of nationally designated landscape and nature conservation from mineral development other than in exceptional circumstances and only in the public interest. The advice also states in paragraph 8 that the environmental statement submitted in support of any minerals application should ensure that all environmental impacts are understood in full before any development proposals are advanced. Under the terms of paragraph 18 of the Minerals Policy Statement it is stated that where effective mitigation of unacceptable impacts is not possible then planning permission should be refused. It is contended that in the present case there are no effective mitigation measures that will remedy the unacceptable environmental impacts. Accordingly, planning permission ought to be refused.

5.6 Further advice is set out in Minerals Planning Statement number 2 in annex number 1 concerning the need to mitigate dust nuisances. It should be noted that developers are encouraged to use the best available techniques for the purpose of minimising dust production within minerals workings and that in submitting proposals for a new site the applicant must be able to demonstrate that the appropriate mechanisms will be put in place for dealing with any consequential air pollution. Unfortunately, the measures put forward in the environmental statement do not contain adequate information on the issues relating to potential dust nuisances. A Minerals Planning Authority is encouraged to obtain a full “dust assessment study” from a developer and to require a formal and comprehensive “dust action

plan". Furthermore, it is necessary for developers to ensure that they comply fully with the advice set out in Planning Policy Statement number 23 on "planning and pollution control". The same applies to any noise or disturbance nuisances that may arise from the operations of the minerals workings. In this respect developers must comply with the guidelines set out in Planning Policy Guidance Note number 24 on "planning and noise". Clearly, one would expect detailed reports to be submitted concerning the provision of adequate acoustic screening supported by detailed technical information from an acoustic specialist. Unfortunately, the level of detail required does not appear within the environmental statement giving rise for further concern in this respect

6. Development plan policies

6.1 In this section reference will be made to some of the more significant policies in the development plan which are relevant to the current planning application. It should be noted that there is a substantial number of relevant planning policies but for present purposes this section of the Statement of Case will focus on those policies considered to be the most important policies having regard to the current context. When one examines the County Structure Plan for 1996-2001 one must have regard for the minerals policies set out therein including policies MIN 1 to MIN 8. In policy MIN 2 it is stated that within "preferred sites" applications will be allowed unless the proposal fails to meet a requirement of the local Minerals Plan or there are unforeseen unacceptable environmental or other problems. It therefore follows that under the terms of this policy any adverse environmental impacts can be examined and lead to the conclusion that a "preferred" site can be rejected. In the present case it is considered that the alleged

“preferred” site is unacceptable given the fact that the proposal will have unacceptable environmental impacts as identified earlier in this statement of case. It therefore follows that the proposal should be rejected in accordance with policy MIN 2.

6.2 Furthermore, it should be noted that the proposal and the current planning application includes land which lies outside the “preferred” site and accordingly in any event the application fails to comply with the “preferred” allocation and is also therefore again inconsistent with the policy statement MIN 2.

6.3 It should be noted that under the terms of policy MIN 3 one should normally only allow minerals applications to proceed in cases where it relates to a preferred site if the current land bank is insufficient and it is environmentally acceptable. However, in the present case the land bank is already more than adequate and the proposal in this case is environmentally unacceptable. The proposal is therefore inconsistent with policy MIN 3.

6.4 Under the terms of policy MIN 6 it is stated that minerals applications will be refused if it will have unacceptable impacts upon :-

- a. Visual amenities.
- b. Local amenities.
- c. Landscape interests.
- d. Highway interests.
- e. Heritage and archaeology.
- f. Water resources.
- g. Nature conservation

- h. The need to preserve good quality agricultural land.

It should be noted that in this case part of the site comprises grade 3a agricultural land being good quality agricultural land which should normally be preserved from such development. It should also be noted that the proposals set out in the current planning application are inconsistent with the other criteria mentioned above. It therefore follows that the proposals in the current planning application are inconsistent with policy MIN 6 and should therefore be refused.

6.5 Under the terms of policy MIN 7 planning permission can only be granted for mineral extraction if the provision for reclamation and beneficial after use is acceptable. However, in the present case the environmental statement does not contain adequate information to provide the required degree of assurance that there will be appropriate and practical reclamation works carried out. Given the inconsistency with the terms of policy MIN 7 it is considered that the application should be refused.

6.6 The proposal set out in the planning application also contravenes the countryside policies which are designed to protect the open countryside for its own sake. In this respect reference is made to policy C 5 which contains the presumption against non-agricultural development in the countryside. Reference is also made to the policies designated NR 1 to NR 12 which are designed to protect landscape interests. It should be noted that there is a presumption against development in traditional landscape areas and one of the objectives of the policies is to protect landscape features including ancient woodlands where there is a presumption against development. There

is also a presumption stated in policy NR 6 against development on or adjacent to a Site of Special Scientific Interest unless there is an overriding need for the development and a provision for a compensatory scheme to be introduced. Policy NR 7 seeks to implement the Essex Biodiversity Action Plan. Unfortunately, the present proposals in this case would appear to undermine any such objectives.

6.7 Policy NR 8 places a presumption against development on good quality agricultural land. Good quality agricultural land is defined to include land classified at grade 3 (a). Given that part of the site is classified as grade 3 (a) it is contended that the proposal in the current case is inconsistent with policy NR 8.

6.8 In policy NR 12 it is stated that there is a presumption against development for mineral extraction if it poses a risk to the flow of underground water or existing abstraction of water resources. In the present case it is contended that the evidence indicates that the proposal would have an adverse impact upon ground water and accordingly the proposals in the current planning application are inconsistent with policy NR 12. The same argument relates to nature conservation interests and also landscape interests.

6.9 Under policy H C 3 it is stated that there is a need to protect listed buildings and the setting of those listed buildings. It is contended that the proposed development would have an adverse impact upon the setting of a listed building. Under policy HC 5 there is a presumption against development affecting archaeological sites. Given the absence of information in the planning application on this point it is contended

that the current proposal is inconsistent with policy HC 5. This point is reinforced in policy HC 6.

6.10 In policy BE 6 it is stated that there is a presumption against development which may cause pollution which may be hazardous or noisy. It is contended that the proposed mineral extraction application puts forward proposals which contravene the terms of policy BE 6. Under terms of policy BE 7 it states that applications should be refused if the adverse impacts from the development can not be minimised. Under the terms of the current proposals in the current planning application it is contended that those proposals do not comply with policy BE 7.

6.11 Under the terms of policy LRT 5 it is stated that there is a need to protect existing public rights of way. Under the current proposals the planning application indicates a number of existing public rights of way would need to be diverted in order to facilitate the implementation of the development. Given the importance of the existing public rights of way and the current routes enjoyed by many local residents it is considered that the proposals set out in the planning application are inconsistent with the objectives set out in policy LRT 5. Under the terms of policy RE 4 which relates to new uses for former airfields it should be noted that the new uses of former airfields should normally be agricultural, forestry or recreation. The proposals set out in the planning application do not fall within any of those objectives and accordingly the proposals are inconsistent with policy RE 4.

7 Conclusions

Given the large number of concerns expressed above it is recommended that the application for planning permission be refused. It should be noted that further detailed objections will be lodged shortly in a more detailed statement of case. Please note that the professional background and experience of the author of this statement of case is set out in the schedule annexed hereto.