



**WYRE FOREST DISTRICT COUNCIL
LOCAL PLAN 2016-2036**

HEARING STATEMENT

**IN RESPECT OF MATTER 6(ii) STOURPORT-ON-SEVERN (OTHER ALLOCATIONS FOR
HOUSING AND MIXED USED; RESERVED HOUSING SITES**

**SUBMITTED ON BEHALF
OF
LIVING SPACE HOUSING**

Date: December 2020

Ref: 20.336

Representor reference 977760

Michael Robson

Introduction

1. This Hearing Statement is made for and on behalf of Living Space Housing, which should be read in conjunction with representations made to the pre-submission consultation in October 2019 by Richard Brown Planning made on behalf of the land owner. This representation answers specific questions as set out in the Inspector's Matters, Issues and Questions document (ED16) published on 19th October 2020.
2. As set out in our Hearing Statement in regard to Matter 3 we are concerned that the Council has failed to have regard to paragraph 138 of the NPPF when devising the spatial strategy and that no consideration has been given to the potential of previously developed land within the Green Belt. The sequential approach is oft related back to PPS3 and housing generally but in fact, it is the only surviving element of that approach towards delivery to have been carried forward. The sequential approach still exists in the Green Belt and this should be given significant weight. If this was not the Government's intention, the guidance at paragraph 138 would have been removed.
3. By way of background, our client's site at Yew Tree Walk, Stourport had been allocated as a housing site in accordance with the sequential approach set out in an earlier version of this iterative plan making process because it was considered to be appropriate, justified and effective as required by paragraph 35 of the NPPF as a previously developed site within the Green Belt.
4. We set out below answers to the Inspectors Issues and Questions which are based around the site selection process, which we consider to be flawed, which has led to the Council effectively de-allocating a previously developed site within the Green Belt at Yew Tree Walk from the Pre-Submission Version.

Question 6.1 Is the selection of the other site allocations in each of the identified areas based on an adequate assessment of all potential sites, including sustainability appraisal and assessment of their roles in serving Green Belt purposes? In particular:

a) Have the assessments used suitable methodologies and applied them consistently?

5. As representatives of Living Space Housing who have an interest in the site at Yew Tree Walk, which is in the Green Belt, our comments concentrate on the selection of other Green Belt site allocations in Stourport-on-Severn only.
6. A review of key evidence documents, specifically the Site Selection Paper, HELAA 2019, Green Belt Review, the Sustainability Appraisal and the Strategic FRA has been undertaken to underpin the following views.
7. It is our assertion that each of the above assessments are relevant and for the most part include up-to-date evidence in accordance with paragraph 31 of the NPPF. However, we are not convinced that all evidence has been taken into account in relation to the site at Yew Tree Walk and fails to justify its de-allocation as a housing site within the Submitted Version of the Plan.
8. The aim of the SA is to promote sustainable development. It takes account of the Plan's likely significant economic, environmental and social effects and suggests measures to minimise any negative effect and maximise positive ones. The SA process provides the opportunity to consider reasonable alternatives for how the plan can contribute to improving environmental, social and economic conditions and should demonstrate that the Plan has gone through an inclusive, transparent process. The SA considered alternative options for the Plan including "brownfield v. greenfield" – it concludes that the "plan aims to put as much development as possible on brownfield sites, which are mostly in Kidderminster and Stourport. This does not set out a sequential approach

to site selection as required by paragraph 138 of the NPPF but does at least recognise the distinction to be made between brownfield and greenfield land.

9. Each of the sites proposed for development were assessed against the 13 SA objectives, including number 12 – to maintain the integrity of the Green Belt. There is no discussion within the document in relation to previously developed land within the Green Belt for *“when it has been concluded that it is necessary to release Green Belt land for development, plans should give first consideration to land which has been previously- developed.”* (paragraph 138 of the NPPF). This is a significant failing in terms of methodology.
10. To illustrate this point, the 2 other proposed Green Belt housing allocations in Stourport at Coniston Crescent (MI/38 – school site, redundant school building and associated playing field) and LI/11 – greenfield, former golf course site) were scored in exactly the same way as the site at Yew Tree Walk (yellow; -1). This cannot be correct as the areas proposed for development within both of those sites are clearly green field sites within the Green Belt (as evidenced by their description within the HELAA and Site Selection Papers.) The fact that the site at Yew Tree Walk is previously developed places a policy requirement to “consider first” its development potential. The Council has consistently applied this unsuitable methodology when assessing all Green Belt sites and in doing so, has failed to prioritise the re-use of the site at Yew Tree Walk above the other Green Belt sites allocated for development within the Plan.
11. The HELAA 2019 sets out a 5-stage methodology to assess the potential of sites to come forward for development. It is set out in accordance with guidance contained within the NPPG and in this regard is considered suitable. The way in which the information is set out in tables A-M makes it very difficult to compare similar sites for a consistent approach however. For instance, to find out how the site number AKR/18 – land at Yew Tree Walk has been assessed, Table 4 directs the reader to table H. Assessments for other Green Belt sites at West of Coniston Crescent (LI/11) and land adjacent to Rock Tavern are found on table J; whereas the school site at Coniston Crescent (MI/38) is found on tables H and J.
12. On closer examination, it becomes evident that site AKR/18 – land at Yew Tree Walk does not appear in table H (Green Belt Brownfield Sites deliverable beyond 5 years) but that it appears within table J – Green Belt Greenfield sites deliverable beyond 5 years but with a capacity for 14 (far less than the potential yield of the site) with the other sites. There is no explanation within the document to explain why table 4 would direct the site at Yew Tree Walk to a table referring to Green Belt brownfield sites or why in actual fact, it appears within table J which refers to Green Belt greenfield sites. There is clearly an imbedded inconsistency to this approach. The very fact that there are separate tables for greenfield and brownfield sites within the Green Belt must indicate that they have been assessed differently but such a specific assessment or any methodology for it is not made explicit.
13. The Green Belt Review has assessed each of the sites above in a consistent manner. The methodology applied is suitable but again lacks any reference to paragraph 138 and the requirement to first redevelop brownfield sites within the Green Belt.
14. It should also be noted at this juncture, the Green Belt Review concludes that that both of the sites at Coniston Crescent make a **significant contribution** towards the five purposes of the Green Belt; whereas Yew Tree Walk forms only a **contribution**.
15. The Strategic FRA has assessed all of the sites above consistently; only those with identified as having risk from flooding were taken to the level 2 assessment.
16. Finally, the Site Selection Paper brings all of the findings of the reports above to make recommendations on which sites will be allocated. Once again, this document fails to take account of paragraph 138 in its overall assessment of the potential for brownfield sites to come forward for development. Appendix 6 contains the justification for the removal of the site at Yew Tree Walk,

which argues that the site is not previously developed, the land is unstable, impact on wildlife, views of the conservation area, contamination and adverse impact on traffic.

17. The justification provides a summary of the assessment of the site at Yew Tree Walk. It makes it very clear that the Council's methodology for site selection is not suitable.

b) Is it clear why the Council has decided to allocate the specific sites and not others?

18. It is not clear why the Council has decided to allocate these other Green Belt sites (which are greenfield) without giving proper consideration to the site at Yew Tree Walk (which is previously developed).
19. It is asserted that the site at Yew Tree Walk is previously developed due to its previous use for the extraction of sand and gravel; the Council has been presented with evidence to this effect, but have to-date failed to give this any weight. Please see a timeline of events at **appendix 1** (the documents referred to were submitted with representations made to the pre-submission consultation). **Appendix 2** contains images of the site from 1945 and 1955 as well as an ordinance survey plan from 1951 which have been obtained from <https://www.old-maps.co.uk/#/searchresults/town/stourport-on-severn>
20. To add further weight to this assertion, further research has been carried out; the data.gov.uk website illustrates the indicative boundaries of the current and former sites with planning permission for minerals development in Stourport. Whilst the site at Yew Tree Walk is not featured, the information is caveated as follows *"It is and does not purport to be an official record of all planning permissions for mineral working in the county. For detailed Information about Individual sites and site boundaries relevant planning permissions should be referred to. Very large numbers of former mineral workings were developed in the county before 1947, prior to the requirements of the express planning permission and are not shown here. Sites developed under the General Permitted Development Order are not shown."* (**appendix 3**)
21. Planning Inspectors dealing with Section 78 appeals generally have been consistent in their approach to dealing with what constitutes previously developed land. Three relevant appeals are considered helpful to the case we are making in relation to the site at Yew Tree Walk and are attached at **appendix 4**.
22. There is no record of consents having been made to restore the site through development procedures and the site therefore is PDL. The Inspector dealing with one of the appeals refers to the unnatural and artificial appearance of the landform as a result of the previous use. Whilst the site at Yew Tree Walk is flat, without obvious signs of the previous use; it does lie on a plateau with steep slopes at its edges, particularly steep along the western edge. The Promotional Document produced by Pegasus Design on behalf of the landowner, which was submitted to earlier representations of earlier versions of the Plan states within the landscape and visual settlement analysis section; *"the site is set on the south facing valley slope to the River Severn. However, unlike the sloping valley face to the immediate north-west and south-east, the landform of the site is broadly consistent with the adjacent plateau. This reflects the historic changes in landform through the deposition of material at this point."* This is another indication that the site is previously developed land and that it has not blended into the landscape (where it perhaps would qualify as not being PDL as set out in the exclusion of the definition.) A photograph is attached at **appendix 5** of gas monitoring equipment still evident on site as further indication of the previous use.
23. It is also relevant to note that there is no record of any enforcement action having been taken by the Council in relation to either the original sand and gravel extraction or infilling of the site with ash in preparation of the site before being laid out as a playing field.

24. It seems likely that the housing estate to the north of the site was constructed in the 1970's and that would relate well to the anecdotal evidence provided by local residents to the Council regarding the site's historic use. They corroborate our evidence which confirms ash was used from a nearby power station to fill in the sand and gravel pits in the 1970's. There is no planning history available to view on the Council's website in relation to the development of the site for a playing field or indeed, for the restoration of the site as part of residential development of the adjoining site for housing. If this had been the case, the Council would have provided this as part of their evidence to reinforce their case that the site is not previously developed land. The fact that they have not, adds further weight to our case.
25. It is our view that there is overwhelming evidence that the site at Yew Tree Walk does constitute PDL for all of the reasons set out above. If, however, the Inspector is minded to disagree, it should be noted that the site is located in a highly sustainable location, directly adjacent to the western edge of Stourport. Previous representations through the plan making process have been submitted to make this case supported by a Promotional document which fully details the site's constraints, opportunities, performance against the five purposes of the Green Belt as well as dealing with ecology, landscape and flood risk issues. A separate Transport Note produced by WSP also accompanied representations made by Richard Brown Planning to demonstrate access and highway issues arising from the development of the site were not severe.
26. There is no evidence to explain why the site has been removed from the Plan. It is regrettable that questions by the landowner and their representatives in this regard have not been answered. It is clear that the site at Yew Tree Walk should have been allocated in the Pre-submission draft (it was a previous draft allocation, based on all of the Council's evidence base). The same evidence underpins the publication version, except the anecdotal evidence provided by local residents.
27. The Council has not provided any evidence that the site is not previously developed and it is therefore respectfully requested that the Inspector give proper consideration to the re-allocation of this previously developed site for up to 85 dwellings within the Green Belt, which according to paragraph 138 of the Framework, should be given first consideration.

c) Is the proposed development of each of the allocated sites consistent with the Plan's vision, aim and objectives and with national planning policy?

28. It is our view that the proposed development of each of the allocated sites cannot be consistent with the vision, aim or objectives of the Plan and are not consistent with national policy.
29. The objectives to encourage long term sustainable development and to maximise the use of previously developed land to ensure the best use is made of available land both within and beyond the main towns and to protect and support the role of the Green Belt are not being met with the allocation of the sites proposed for the reasons set out in 61b and c above.
30. There is no reference at all to NPPF paragraph 138 to explain why the Greenfield Green Belt sites have been chosen over any brownfield Green Belt sites. Given that NPPF paragraph 138 sets out a clear sequential approach prioritising brownfield land before moving to consider greenfield land, as drafted the Plan is inconsistent with National Policies.
31. There is a clear disconnect between the proposed allocated sites and the Plan's vision. It cannot be claimed that the Plan is maximising the use of previously developed land if the site at Yew Tree Walk is not proposed as an allocation which would result in the use of a brownfield site within the Green Belt.

Conclusion

32. As set out above we do not consider that an adequate assessment of all other potential sites has been carried out. The Council has failed to make a proper assessment of the potential of the land at Yew Tree Walk to be used for residential purposes in direct conflict with advice contained within paragraph 138 of the NPPF.

(2709) words including questions but excluding appendices)

List of Appendices

1. Timeline of events leading up to de-allocation of the site at Yew Tree Walk for housing.
2. Images and OS plan from the old maps.co.uk website.
3. Extract of Plan illustrating the current and former sites with planning permission for minerals. development in Stourport
4. Extracts of appeal decisions.
5. Photograph of gas monitoring equipment on site.

Appendix 1

Timeline of events leading up to de-allocation of the site at Yew Tree Walk for housing.

- i. The Council held a Call for Sites and as a result the site was put forward to the Housing and Economic Land Availability Assessment (HELAA) 2016 (site reference AKR/18) and the Council considered that the site was suitable for residential development. An extract is provided below:
"This scrubland site lies to the south of a housing estate and was previously used to store arisings from the old power station. It is therefore deemed to be previously developed land. The entire site is in the Green Belt. The Moorhall Marsh LNR abuts the eastern end of the site. A TPO (2013) covers 18% of the site – 2 areas of mixed woodland at western and eastern ends. 25% of the site is in flood zone 3. Together, these constraints limit the developable area. Access along Moorhall Lane to the south is impossible in times of flood and all access would need to be through the adjacent housing estate which may potentially limit site capacity."
- ii. In December 2017 the site was included on the Council's Brownfield Land Register (it remains on the Register) and subsequently in October 2018 allocated for residential development in the Councils' Pre-submission Draft of the local plan review. Allocation Yew Tree Walk AKR/18 states:
*"This area of land to the rear of Stagborough Way estate was used to tip waste from the former power station. It is on a raised plateau with steeply wooded slopes to the River Severn floodplain below ... **This site was previously subject to sand and gravel extraction in the 1950s before it was infilled with ash waste material from the power station.** Although currently in the Greenbelt, the site plays a limited role in fulfilling the Green Belt purposes. The site must be designed to integrate well with the neighbouring development and take care with massing and building heights so as not to dominate views across the valley."*
- iii. On 22nd May 2019, the Council sent an email to the landowner requesting justification for the inclusion of the Site on the Brownfield Land Register and its classification as PDL.
- iv. On 28th June 2019 the land owners' solicitors (Howes Percival) requested that the Council provide them with the evidence it had relied on to suggest the site should not be included on the Brownfield Register.
- v. No substantive response from the Council was received but instead published the open Cabinet agenda for its meeting on 16th July 2019. Appendix 6 of the Site Selection Paper June 2019 sets out the justification for the removal and its conclusions were presented in July 2019 within a report Cabinet endorsing the de-allocation of the site as follows:

*"The site allocation 'Yew Tree Walk, AKR/18' has been removed from the Local Plan as a number of issues came to light since the site was proposed. It has been concluded that the site does not meet the criteria for being on the Brownfield Land Register and should therefore be removed from the Local Plan. **This is because there is no evidence that the site was used for the extraction of sand and gravel and there is no evidence to show that it has been previously developed as defined by the NPPF.**"*
- vi. July 2019 Howes Percival wrote to the Council again to demand information which the Council had relied on to remove to site allocation be disclosed to enable comment before the Cabinet meeting. It attached evidence that the land owner had relied on (aerial photos, historic maps, trial holes and trenches and the Jacobs 2014 (they were attached to previous Regulation 19 representations and so the Inspector will be in possession of them)
- vii. On 15th July 2019 Howes Percival sent a further 1948 photograph and a 1955 ordinance survey map showing the site together with 2 nearby mineral workings.
- viii. Still having received no response from the Council, Howes Percival emailed Councillors directly on 16th July 2019 (fully set out as an appendix to the Regulation 19 representations)

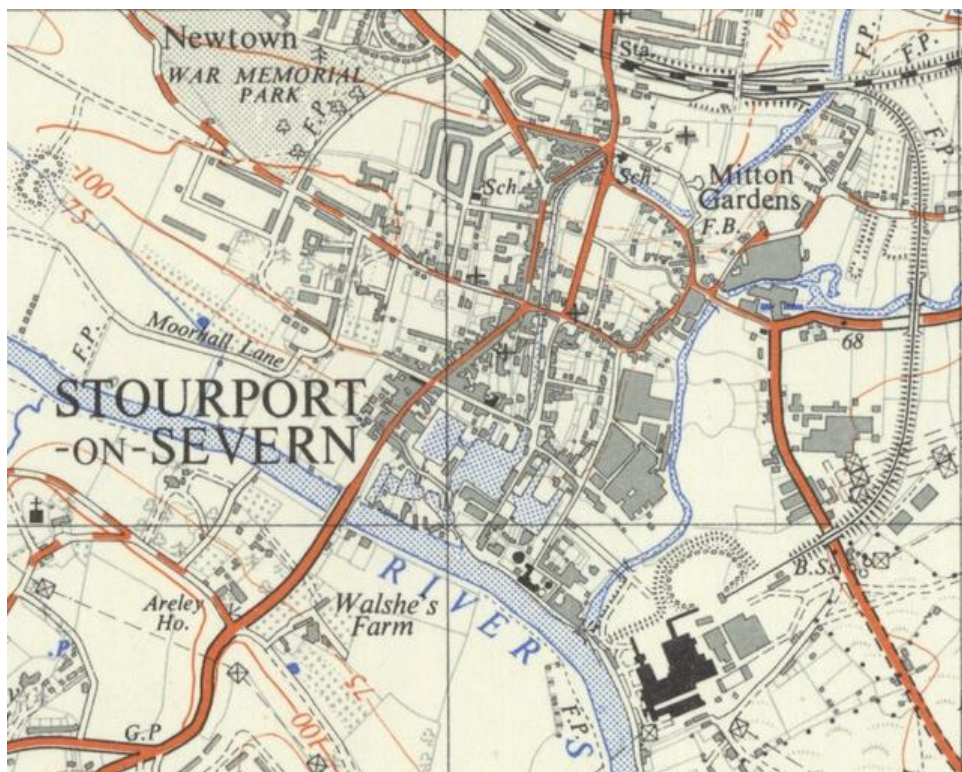
- ix. The HELAA was updated, along with the Sustainability Appraisal in July 2019 to remove reference to the former use for sand and gravel extraction but instead making reference to the site being used as a sports field on to which ash was tipped.

Appendix 2

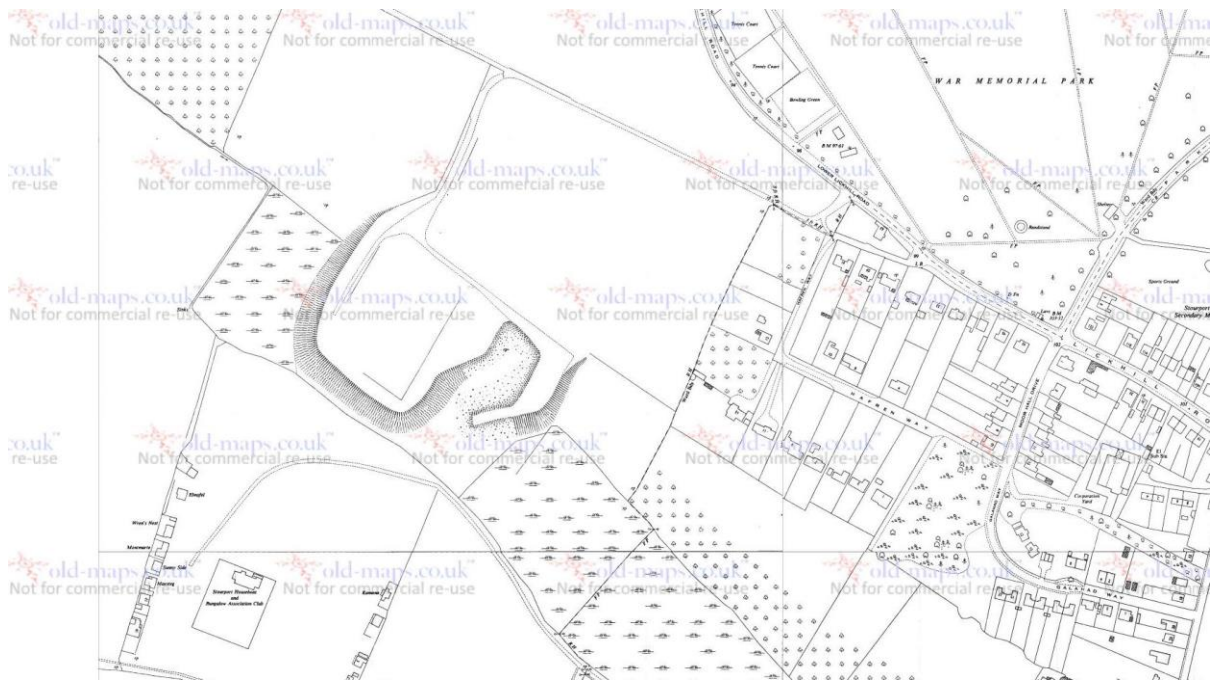
1945



1951



1955



Appendix 3

Extract of a plan indicating the current and former sites with planning permission for minerals development in Stourport dated 12th September 2013

<https://data.gov.uk/dataset/226ab90f-5f54-46c6-9b5d-2d8f9a096ce6/mineral-sites>



Appendix 4

APP/M9565/A/10/2136176 - South Ockenden Industrial Estate, South Ockenden - August 2011

- 1 Paragraph 12 - "The appellants submit that the site should be classified as previously developed land rather than countryside. The land in question was previously used for minerals extraction under planning permissions which have now expired and PPS3 states that 'land that has been developed for minerals extraction or waste disposal by landfill where provision for restoration has been made through development control procedures' is excluded from the brownfield definition."
- 2 paragraph 13 - " Although the minerals permissions included conditions requiring reinstatement, these conditions do not appear to have been discharged. There are no records of any definitive plans submitted to them and no indication of which areas they covered. There has also been no enforcement action in relation to any failure to complete such restoration. There are consequently no development control procedures requiring restoration of the land."
- 3 paragraph 14 - " PPS3 also states that the brownfield land definition excludes 'land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time (to the extent that It can be reasonably considered as part of the natural surroundings)"
- 4 Paragraph 15 - "nevertheless, the majority of the mineral extraction areas had no permanent structures or surface finish. For this reason and because the appeal site includes mineral workings that have not been subject to a formal restoration programme, I find that these areas are brownfield land and their development would not result in encroachment into the countryside."

APP/J1915/W/19/3241810 - Former Clay and Gravel Quarry, Quarry End Manor, Hertingfordbury - March 2020

- 5 Paragraph 8 – “The appeal site is a former quarry that has been derelict for some time and not restored. It was subsequently used for the tipping of waste by local authorities. The appellant contends that the appeal site amounts to previously developed land as there are no effective provisions for restoration of the appeal site through the development control procedures following quarrying.”
- 6 But “In 2013, a previous application at the site was granted on appeal for an internal service road within the site and associated re-grading of the deposited material of which conditions have been discharged. A further application was granted in 2015 at the site to regrade the land including the importation of inert fill, and restoration to agricultural use ...the appellant confirms this has commenced.”
- 7 Paragraph 10 – “ The evidence before me sets out that previous planning permissions at the site have included decontamination, restoration and remediation, with the principle aim of following remediation to permit an agricultural after-use....I have no substantive evidence before me that the development management procedures would only relate to the closure of the quarry itself, rather than a subsequent planning permission for a different use/ and or development or whether the restoration may be less than certain coming forward. Therefore, the appeal site would not meet the definition of the Framework, and as such I do not consider that the site amounts to PDL.”

APP/M3455/A/07/2054057 – Scotia Road, Stoke-on- Trent – May 2008

- 8 The Council had claimed that the site, a former quarry, now greened over did not constitute PDL. The appellants had explained that in 1937 the site had operated as a fireclay site without any

provision for restoration. In 1974 planning permission was granted for landfill but it was never implemented. Unauthorised fly tipping had clearly occurred on the site – that activity ceased but no one is able to identify with precision when, but appears to be during the early 1990's. The Inspector came to the view as follows:

- 9 Paragraph 13.4 – “in terms of exclusions, the site is not a former mineral extraction or landfill site which has been restored through development control procedures as the 1975 permission was never implemented.”
- 10 Paragraph 13.6 – “The 1937 map and 1974 photograph of the quarry appear to show extremely uneven land. Later aerial photographs show some current features following the line of the quarry tracks. On balance, there is a high probability that existing, visible land features and some tracks were related to the previous quarrying use.”
- 11 Paragraph 13.7 – “Although aerial photographs give the impression of an even, green site, the appeal site has a very unnatural and artificial landform as a result of its previous use. Even though it has been colonised with plants, the mounding and tracks are evident and have not blended into the landscape. The uneven landform bears no relation to any of its surroundings, which are housing and urban parks...It could not reasonably be considered to be part of the natural surroundings. The site should be taken as a whole as the entire appeal site was part of a quarry and its unnatural landform is fairly consistent throughout the site. The appeal site would, therefore, constitute PDL.”

Appendix 5

Photograph of gas monitoring equipment on site – November 2020

