



**STATEMENT OF CASE BY
CITY OF BRADFORD METROPOLITAN DISTRICT
COUNCIL**

**TOWN AND COUNTRY PLANNING ACT 1990
SECTION 78 APPEAL**

Horn Crag Quarry, Fishbeck Lane, Silsden

Appeal by Andrew Calvert

Ref: APP/W4705/W/23/3332884

**STATEMENT OF CASE BY BRADFORD METROPOLITAN DISTRICT COUNCIL -
Horn Crag Quarry, Fishbeck Lane, Silsden - Appeal Ref APP/W4705/W/23/3332884.**

1.0 Introduction

- 1.1 On the 24 May 2023, the Local Planning Authority (“the LPA”), being the Minerals Planning Authority (“the MPA”), refused through delegated officer powers, the application seeking planning permission for the development described as:

“Re-opening of Horn Crag Quarry for the purposes of releasing a proven locally distinctive building stone resource”

which the applicant, Andrew Calvert has appealed. Planning Application ref: 23/00829/MCF

- 1.2 The reasons for refusal are:

- 1. The proposal as submitted is unacceptable, as there are risks to groundwater and private water supplies (potable drinking water) from the development and there is inadequate information to demonstrate that the risks posed to the groundwater and private water supplies can be satisfactorily managed and/or mitigated. As such the proposal is contrary to Policies EN8 and EN9 of the Bradford Core Strategy and paragraph 174 of the National Planning Policy Framework.*
- 2. The proposal as submitted is unacceptable, as it will not make a positive contribution towards the conservation, management and enhancement of the diversity of landscapes within the designated landscape character area of the Rombalds Ridge Landscape Character Area. The change is not considered*

acceptable, as it will have adverse landscape and visual effects, particularly in relation to; the loss of an area of distinct character and a local landmark within the broader character area; the significant impact on recreational use due to the visual impact of the quarry works; the length of disruption and disturbance locally and on the broader enjoyment of the surrounding Landscape over a minimum of 20 years with potentially an additional 15 years to achieve some maturity in the restored scheme; the adverse visual impacts on amenity for residential properties; the adverse impacts on tourism; and the adverse impacts on recreation.

As such, the proposal is contrary to policies EN4, DS2, DS5, EN1 EC4 (F) and EN9 (3) of the Bradford Core Strategy, the Landscape Character Assessment SPD for Rombalds Ridge and SWES5 and SWES6 of The Steeton with Eastburn and Silsden Neighbourhood Development Plan.

- 3. The proposal as submitted is unacceptable, as it will not contribute positively towards the overall enhancement of the District's biodiversity resource within an acceptable timeframe. The priority habitat on the proposal site, coupled with the restrictive site boundary compared to the extraction area means the approach is not effective at returning to an overall Net Gain for biodiversity until around Year 30. The role of the proposal site in the Wildlife Habitat Network is of significance and the proposal will result in a weakening of the mapped network, removing priority and Biodiversity Action Plan habitats from the network for the life of the operational quarry. The proposal is therefore contrary to Policies EN2 and EN9 of the Bradford Core Strategy, paragraph 174 of the National Planning Policy Framework and the Environment Act 2021.*

Furthermore, the proposal does not meet and is contrary to the locational criteria for a quarry set out in Policy EN10 E (3), in that it would be likely to lead to the significant deterioration of an irreplaceable habitats, or to the permanent disruption of a significant ecological network.

4. The application as submitted provides insufficient information to enable its proper consideration by the Local Planning Authority. In particular, there is inadequate information with regards to potential adverse impacts on Protected Species and no indication of appropriate mitigation that would satisfy the requirements of a licence to disturb and be effective for the lifetime of the quarry. As such the proposal is contrary to Policies EN2 and EN9 of the Bradford Core Strategy.

1.3 The Council's will defend each reason for refusal by a proof of evidence from the relevant consultee and/or expert.

1.4 The Council will describe its decision making process in relation to the application. This will include relevant correspondence, consultations with Council Departments, statutory and other bodies. Reference will be made to the advertising of the application and representations received.

1.5 Response to Appellants Statement of Case

1.6 The appellant states at 3.3 of their SoC that the case officer made several consecutive requests for clarification but determined the application prior to receipt of the additional information.

Response

1.7 The last request for clarification from the case officer was on the 5 May 2023. Two further documents were received from the appellant on the 15 May 2023 (response No 3) and 19 May 2023 (response No 4). The information submitted by the appellant did not overcome the concerns raised by the Council.

1.8 The application subject of this appeal was a resubmission of a previously withdrawn application (22/01170/MAF). The Council will evidence that the re-

submission did not include or address all the consultees previous concerns/issues, with the Appellant stating within their submission that no further information would be supplied on certain matters outstanding for the MPA .

2.0 The Site and surroundings

2.1 The site is just under 6ha and accessed from an unmade track off Fishbeck Lane. Footpath Silsden 19 crosses the access track. A small part of the of the site is a historical quarry, operated prior to planning legislation and again, by limited unauthorised quarrying works in the early 1980s. The small former quarry has been reclaimed by nature. The majority of the proposed redline area of the site does not include a former quarried area.

2.2 The Council will describe the site, surrounding land uses and features, which include

- A number of residential properties within proximity of the site
- Two caravan parks, one a permanent residential caravan park, the other a mix of residential and holiday lets.
- A number of public rights of way adjacent and with views into the site
- An equestrian stabling business
- Agricultural land

2.3 Response to Appellants Statement of Case

2.4 The Council do not concur with the Appellant that the site is characterised as a historic quarry. Part of the site (approx. 1ha with approx. 3ha total including areas previously subject of enforcement cases) is a former quarry, the remaining areas are rough pasture, areas of heathland, and some areas of shrub with some birch on the western boundary. The previous quarry operations were small scale, primarily 100+yrs ago (with some disturbance some 40 years ago in the 1980s) and the majority of the site has not been worked. The formerly quarried area has blended back into the landscape.

3.0 Planning History

3.1 The Council will describe the planning history of the Horn Crag site. Reference will be made to the adopted Bradford Replacement Unitary Development Plan, the adopted Bradford Core Strategy and National Planning Policy Framework and any other relevant Planning Policy Guidance Notes and Planning Policy Statements which formed part of the decision making process.

3.2 The Council will note the historic applications from the 1980s, noting that all of the six applications were refused and that three related to the extraction of blockstone and two for sandstone extraction for aggregate production (one is unknown). We have no records of any appeals against these refusals.

3.3 The Council will reference the reasons for refusal for the 1980s planning applications, which for all included:

- High probability of adverse impacts on potable water
- High Landscape Value – with the quarrying not compatible and severely damaging amenities of the area
- Inevitable adverse effects on protected wildlife habitats within the site

3.4 The Council will provide the history, as it is available, in our records associated with the unauthorised activities on the site in the early 1980s, that led to enforcement and stop notices being served due to the gross pollution of the potable water supply serving the nearby properties.

3.5 The Council will reference the previous 2022 application (22/01170/MAF), noted by the Appellant as being an almost identical scheme. The Council consider the application subject to this appeal is a re-submission of the 2022 application.

3.6 Response to Appellants Statement of Case

- 3.7 The appellant states at 2.2 of their SoC *“The current planning application differs greatly from historic mineral planning applications at The Site. Previous planning applications were for the extraction of crushed rock / aggregate, primarily for the construction of the Airedale Route Highway.”*

Response by the Council:

- 3.8 All the historic applications at the site have been refused and they vary in the type of application. Of the 6 applications only 2 applications are known to be for crushed rock/aggregate - the 3 other applications relate to block stone/stone(dimension stone) removal and one is unknown.

83/06858/FUL - block stone

84/02257/FUL - block stone

86/02290/FUL – aggregate

86/06567/FUL - aggregate (repeat app)

87/01914/FUL - block stone

88/01418/FUL - unknown

- 3.9 The appellant states at 2.3 of their SoC *“Additionally, a routing agreement is proposed such that HGVs would not pass through the centre of Silsden which is understood to have occurred when The Site was run in the mid-late 1980s.”*

Response by the Council :

- 3.10 As all previous applications were refused it is unclear what routing agreement the appellant is referring to. The Council records show the site has never been operational through a grant of planning permission in the 1980s or since. Records show the small quarry was operational prior to planning control coming into effect in 1947 and the Council records show unauthorised works took place in the early 1980s resulting in Enforcement/Stop notices being issued in 1983.

- 3.11 The appellant states at 2.4 of their SoC *“A planning application was submitted in*

2022 for an almost identical scheme to this one but was withdrawn when the Council advised that they required winter ecology surveys in order to determine the application and would not consider postponing determination until such time that they could be completed [These surveys were completed and submitted with the current planning application].”

Response by the Council:

3.12 The Appellant noted on the 31 May 2022 (under the previous withdrawn app 22/01170/MAF) that the following docs were to be submitted

- Botanical Survey
- Landscape Addendum
- Additional Bird Survey
- Winter badger assessment
- Winter bat assessment
- Additional Traffic Monitoring
- Transport Addendum
- Hydrology Addendum
- Noise Addendum

The MPA responded to the applicant on the 1 June 2022 that .." *The additional studies are noted however, they are quite considerable in number and a some of them are noted as being winter studies/surveys - along with the botanical surveys, bat and bird surveys, which I also understand can only be undertaken in various seasons..”*

“...This application is required to be determined by the 21 June 2022 ...”

“.. Additionally, at this juncture I must note that even with all the listed studies/surveys/reports, based on the consultee responses and conversations with consultees, it is considered unlikely that all of the matters can be readily overcome. and

“As advised in my e-mails of the 26 April 2022 and 13 May 2022 to Mark “ ...it is apparent that the impacts are such that even with further information/surveys it appears it is unlikely that the issues can be satisfactorily overcome..” and “...that

you may wish to consider if it is pragmatic to continue with this application - this advice is more apparent now.”

- 3.13 The MPA advise that quite a number of surveys were required – that it recommended withdrawing the application and that even with the above noted further listed studies/surveys/reports, the case officer advised (at least 3 times) that based on the consultee responses for the 2022 application and the conversations with consultees, it was not considered that the matters could be satisfactorily overcome.
- 3.14 The Appellant chose to withdraw the application and resubmit.
- 3.15 The Appellant states at 2.5 of their SoC *“This scheme received favourable pre-application advice from the determining officer in 2021 which indicated the Council supported the proposal in principle.”*

Response by the Council :

- 3.16 The pre-application advice was based on limited information and without detailed surveys of flora and fauna, landscape and hydrology. Pre-apps are high level advice, do not involve external consultation, are designed to advise if *the principle* of minerals extraction is acceptable and to advise what detailed studies are required. This was the case with this pre-app, the detailed studies (excluding hydrology for which the MPA considered there is insufficient information) were submitted with the application and the Council will evidence that these demonstrated material and fundamental issues which outweighed the principle.

4.0 Decision Notice and Reasons for Refusal

- 4.1 The Council will note the reasons for refusal, addressing each matter by a proof of evidence from the relevant consultee and/or expert and the specifics of each matter and the Councils case of these are noted below.

4.2 Response to Appellants Statement of Case

- 4.3 The appellant states at 3.3 of their SoC the case officer made several consecutive requests for clarification but determined the application prior to receipt of the additional information.

Response by the Council:

- 4.4 The MPA stated the matters that needed addressing. The MPA had informed the Appellant of their position regarding the 2022 application (i.e. they did not consider all matters could be overcome), and the 2023 application did not address these. The MPA had all the consultee responses and considered itself to be in a position to determine the application within the required 13 week determination period. The Council will evidence that the re-submission did not include or address all the consultees previous concerns/issues, with the Appellant stating within their submission that no further information would be supplied on certain matters outstanding for the MPA .

5.0 The Councils Case : Hydrology

- 5.1 The Council will note that they have statutory duties under the provisions of the Water Industry Act 1991, Water Act 2003, the Private Water Supply Regulations (England) 2016, and The Private Water Supplies (England) (Amendment) Regulations 2018. Where a failure of a drinking water standard is reported then the local authority must investigate to determine the cause and take appropriate action to secure that relevant persons rectify any deficiencies identified.
- 5.2 The Council will refer to Regulation 18 of the Private Water Supply Regulations (England) 2016 that requires that if any private supply of water intended for human consumption constitutes a potential danger to human health, a local authority must serve a notice on any “relevant person” as defined in regulation 2. A notice may

be served on one, several or all the relevant persons, depending on the cause and the appropriate mitigation required.

- 5.3 The Council will note that a 'relevant person' can be the owner and the occupier (who may be the same or different persons) of land on which any part of the supply is situated.
- 5.4 The Council will note that Environmental Health are the regulator for the private water supplies in the District and an internal consultee to the Planning Department. It will be noted that Environmental Health were consulted on the 22/01170/MAF and 23/00829/MCF application, as the proposed development has the potential to adversely impact the private water supplies in the area.
- 5.5 The Council will evidence that it is responsible for identifying any risk at the planning stage and ensuring that appropriate mitigation is in place prior to development commencing which would reduce the likelihood of enforcement action under the provisions of Private Water Supply Regulations (England) 2016 being required at later date.
- 5.6 The Council will provide evidence of its requests for information made under the 2022 (22/01170/MAF) application for hydrological information. It will note that the Appellant was made aware of the previous refused 1980s applications and the particular concerns raised about the impacts on the potable water supply through these 1980s applications and an earlier enforcement/Stop Notice. The Appellant was asked to review the historical pollution incidents and historical submitted information for the refused planning applications, including the Haiste Water Review (dated 21 May 1984) and YW review (dated 18 December 1986), as the Hydrogeological Assessment by Hafren Water Ltd submitted with the 2022 application did not reference these matters.

- 5.7 The Council will reference the Appellants resubmission addendum for the 2023 application subject of this appeal, in which it states that the historic 1980s documents were concerned about blasting, that the schemes went below water table level and that, in effect, the submission in the 2022 application was sufficient. The Council will note the application subject of this appeal did not include an updated hydrogeological assessment which considered the additional information relating to pollution of the private water supply as a result of the unauthorised quarrying in the 1980's.
- 5.8 The Council will evidence that it is only two (1986) planning applications for the production of aggregate that note blasting and that it is not the case for of the other blockstone/dimension stone planning applications made in the early 1980s (1983 and 1984). The Council will also evidence that a pollution incident, due to unauthorised works, that took place in late 1982/3, (which resulted in gross pollution of the potable water to the extent that the water authority at the time had to provide water via a bowser for residents) and the service of Enf/Stop notices in 1983 took place – for which it is understood the unauthorised works did not include blasting and was unlikely to have breached the water table.
- 5.9 The Council will evidence why it therefore asked for (in effect) evidence from the Appellant consistent with taking a precautionary basis that there would be no unacceptable impact on groundwater or private water supplies as a result of mineral extraction or restoration operations.
- 5.10 The Council will note that at the time of determination, no further assessment or comments were made by a hydrogeologist on behalf of the applicant. However, the planning agent submitted a number of responses to officer queries documents (see listed) which noted amongst other matters the legitimacy of the water supply, noting that in their opinion the water supply is unlikely to be able to reliably satisfy the needs of one domestic property (let alone several).

5.11 The Council will note the Environmental Health and Environment Agency further and final responses for the 23/00829/MCF application. The relevant experts in Environmental Health and the Environment Agency will expand upon and reference in their proofs the following:

Presence of Source Protection Zone.

5.12 The Council will evidence that the site is not a standard site, and that neither the Appellants submitted HIA (Hafren report) or the supplementary assessment (Version D1 (updated)) dated September 2023 (received during the course of the appeal 06th December 2023), nor any of the responses to the case officer queries by the planning agent (MPG) acknowledge that the area under consideration is a source protection zone where “certain activities cannot take place”. The Council will explain that the EA initially appeared to accept the conclusion of the Appellants HIA in their first responses. However this was based on the belief that the site was not subject to any Source Protection Zones (SPZs) within the Appellants HIA. Once the information that the site was subject to SPZs the EA revised their consultation response and submitted a formal objection to the development.

Consistency between the present and the past in relation to geology and hydrogeology.

5.13 The Council will evidence that the Appellants submitted HIA (Hafren report) and geology referenced in the 1980s documentation listed is consistent, demonstrating that the geology and ground water regime in the area has not changed from the 1980's to the present day. That being the case the historical information and recommendations taken from previous applications to quarry are still of relevance in the present. The source of potential contamination (quarrying), the pathway (fracture flow) and the receptors (springs/boreholes) remain the same.

Offer for alternative supply

- 5.14 The Council will note the applicant made an offer to connect the properties fed by the Horn Crag Springs spring supply to a borehole, as recommended in the 1980s, but this offer was withdrawn.
- 5.15 The Council will note that it advised that if a borehole was not possible a further assessment, which takes into account the site history/historical information, and address the Councils concerns was required, to demonstrate that the proposal would not adversely impact on the private water supplies.
-
- 5.16 The Environment Agency responses to the 2022 and 2023 applications will be noted. The Council case will note that once the Environment Agency was made aware of information that had been publicly disclosed by the Environmental Health Pollution Team at Bradford MDC, specifically in relation to the increased risk to potable water from the development proposal.
- 5.17 The Environment Agency evaluated the information, again alongside national and local planning policy, and technical guidance, considering it necessary to review the formal reply from 24th April 2023 and, applying a precautionary approach, the Environment Agency correctly altered its position to reflect a need for the applicant to clearly demonstrate no unacceptable risks would be created from the proposed quarrying.
- 5.18 On 19th May 2023, the Environment Agency position was altered to one of objection. The revised formal reply, cited a need for further assessment to be undertaken by the applicant to address potential risks to groundwater and present management measures to mitigate impacts to acceptable levels. The revised formal reply provided specific details of how the applicant might consider overcoming the objections [Environment Agency Reply 19 May 2023].

- 5.19 The Council will note that the issues raised in the EA objection response reflect the Environmental Health Officers concerns, raised in both the 2022 and 2023 applications. It will be contended that the EA only proposed a condition in their first 2023 response (dated 24 April 2023) as the EA only evaluate the information submitted in support of the proposed development and was therefore without cognisance of all of the background information (see para 5.12 above). Consequently, the EA accepted the Appellants hydrological assessment, subject to condition, which did not identify any Source Protection Zones and did not reference any historical evidence.
- 5.20 It is acknowledged that the specific details of how the applicant could overcome the separate objections of the Environment Agency and Environmental Health may be possible through the additional assessments received 06th December 2023, currently under active consideration by the Council and the EA.
- 5.21 The Council will contest that this 'additional assessment' should have been submitted with the 2023 application in view of the concerns raised in the 2022 application, 2023 application and the history of the site. It will be contested by the Council that adopting a precautionary approach the potable private water supply should have been addressed through the application subject of this appeal.
- 5.22 The appellant has submitted additional information by way of a 'Hydrological Assessment' during the course of the appeal which seeks to overcome the Council's refusal reason 1. The Council reserves our position on hydrology pending conclusions on the further document submitted and consultation with EA and EHO and their conclusions on the further document submitted.
- 5.23 Response to Appellants Statement of Case
- 5.24 The Appellant notes at 4.3 that "... a nearby (*unlicenced*) spring and chamber ..".

Response by the Council:

5.25 A borehole abstraction needs to be licenced, but a spring need only be licensed when the water is bottled and supplied/sold to the public.

5.26 The Appellant states at 4.4 of their SoC that “*The Environment Agency (initially) had no objection to the scheme and recommended, ordinary, planning conditions be attached to the proposal. However, the application’s case officer contacted the Environment Agency about this stance and a subsequent consultee comment was issued by the Environment Agency with an objection citing a requirement for further information.*”

Response by the Council:

5.27 The case officer requested on 26 April 2023 an explanation from the EA of the proposed planning condition, it was not a request to the EA to change to their stance. The EA updated their response on the 19 May 2023. An explanation for this updated response is noted above and will be detailed further as part of the Councils case.

6.0 The Councils Case : Landscape

6.1 The Council will evidence that it has reviewed the site in relation to its Landscape Character SPD and the potential impact on the Character Area of Rombalds Ridge, in relation to the visual impacts over the potential full working life of the quarry and restoration period, impact on recreational use of the area and impact on residential properties.

6.2 The Council will reference the adopted Bradford Council Landscape Character SPD, which states the area is very sensitive to change due its strong character, high historic continuity and displaying a safe feeling of remoteness.

6.3 The Council will note that it does not designate areas for high landscape value. As such the lack of local designation is irrelevant in this instance. The Council will note that the scale of the landscape in question is too small to warrant a national landscape designation, but that does not diminish its local value.

6.4 The lack of a landscape designation does not necessarily mean a landscape is not of value. The landscape Institutes Technical Guidance Note: Assessing landscape Value Outside National Designations 02/21, suggests that.....

‘the absence of local landscape designations in England does not necessarily indicate there are no landscapes worthy of local designation.’ (paragraph 2.2.5)

Given that the council does not have a mechanism to designate local landscapes means the lack of a designation cannot lead to the conclusion that a given landscape is not of value just because it is not designated.

6.5 The Council will note that former quarries were in the area and do now form part of its character. But not working quarries, with this specific site last operational over 100 years ago, bar a small scale disturbance that occurred 40 years ago. The Council will evidence that the character of the site within living memory is predominately that of a prominent feature with the heather and rough grassland seen today.

6.6 The Council will reference the Appellants LVA submitted with the application subject of this appeal, where amongst other matters it is acknowledged that Horn Crag is a prominent feature within this landscape area, reference section 2.3.6 in the submitted LVA, where it states Horn Crag forms a visually prominent feature within the local landscape, especially from lower elevations to the south and closer viewpoints from the west where it appears as a prominent feature on the skyline. From the higher longer viewpoints from the East and West, the mix of heather,

rough grassland and trees act as a distinct contrast in an area dominated by grazed upland pasture.

- 6.7 The Council will note that views of the site are not limited, as demonstrated by the Appellants LVA. It will note that the site is clearly visible from most aspects and elevations in the character area apart from areas to the North.
- 6.8 The council will note that the restoration proposals actually reduce the profile of the site by about 10m, at its highest point, effectively removing one major distinctive feature of Horn Crag.
- 6.9 The Council will note that views from settlements, primarily the Cringles Park, will result in major adverse effects. The proposals impact on views from Public Rights of Way and from elevated positions, where in addition to existing visual detractors identified in the Councils SPD a new quarry will impact due to the accumulative effect, primarily from elevated locations to the East. The quarry would be an incongruous feature in the landscape that would be visible from a number of sensitive receptors.
- 6.10 The Appellant states the vegetated western part of the site will remain as seen from the west, The council do not concur and will note that this will alter during the extraction of stone as is demonstrated by the changes in levels during extraction and after remediation.
- 6.11 The Council will note that whilst trees will be retained, they afford little screening and due to the scale of the site any trees retained would have a relatively low impact and primarily from closer locations. The Council will evidence that the scale of the quarry would mean the screening effect of the trees was limited.
- 6.12 The Council will note the timeframe for some form of maturity would be 35 yrs plus, but to establish a distinct landscape character as now has taken about 100 years

to establish. As such the Council considered it will likely be decades from closure of the quarry until the vegetation establishes to the point where the colour and tone of the landscape is comparable to that at present. This includes the tone of the newly exposed rock face which will take many decades to weather.

- 6.13 Furthermore, the Council will note much of the change will be permanent. The new profile also will remove significantly one of the main local landmarks due to the proposed finished levels. The Council will note that in all likelihood, Horn Crag will cease to be a local landmark in the future due to the removal of a key landscape element.

7. The Councils Case: Biodiversity

- 7.1 The Council will note that the NPPF and Local Plan do have policies/guidance that relate to Biodiversity Net Gain and that there is an industry wide acceptance by applicants/agents, that in order to demonstrate biodiversity net gain as required by policy, the DEFRA metric should be used. The Appellant recognised this and supplied a Biodiversity Net Gain (BNG) assessment based on the approved DEFRA metric in the 2022 application, which resulted in a significant negative BNG, a loss of 16.04 units, noted as a 27.48 % loss of biodiversity.
- 7.2 The submitted BNG calculation for the 2023 application based on the approved DEFRA metric resulted in similar figures, a 11.04 unit loss, noted as a 28.35% loss of biodiversity.
- 7.3 It is the Council's position that consideration of the time span from habitat damage or loss to habitat restoration and the achievement of net gains for biodiversity, measured either through the Biodiversity Net Gain process or traditional qualitative means, is intrinsic to proper consideration of ecological impacts. The Council is of the opinion that the urgency of the Biodiversity Crisis is such that those temporal considerations have become more essential and consideration more important.

The duty for public bodies to 'Conserve and Enhance' biodiversity through their operations is mandatory, pursuant with the requirements of the amended Natural Environment and Rural Communities Act, 2006. It is the Council's opinion that in meeting this duty (Section 40 of the Natural Environment and Rural Communities Act 2006 (duty to conserve biodiversity) as amended) it is required to consider the longevity of adverse biodiversity impacts which may be caused through the approval of planning applications.

- 7.4 As stated above, the Council's position is that consideration of temporal delays to the achievement of Biodiversity Net Gain are integral to the approach. This is sustained in the body of the Biodiversity Metric 4.0 and previous iterations of the metric, including version 3.1 which the Appellant's ecologist has used for this application.
- 7.5 The BNG process considers temporary impacts of habitat where habitats are restored within 2 years to constitute 'retained habitat'. An implicit consideration of the time taken from habitat damage to restoration.
- 7.6 The Biodiversity Metric 3.1 includes fields that allows applicants to state if there will be delays to starting habitat creation. The metric increases the habitat time to condition and applies the 'time to target condition' multiplier which reduces the unit value of the habitats to be created. This is explicitly intended as an incentive to begin habitat creation or enhancement in advance and a disincentive to delays in habitat creation post habitat degradation. This arises because there is a time constraint on achieving Biodiversity Net Gain, contrary to the assertion of the Appellants Statement of Case.
- 7.7 Landowners and habitat banks are encouraged to begin habitat creation in advance of unit sale and the metric provides an incentive to do this. Developers are encouraged to avoid delays in habitat creation or enhancement through the

opposite use of multipliers. This is noted Biodiversity Metric 3.1 User Guide (Natural England, 21st April 2022).

- 7.8 The Appellant however, also proposed a 'snapshot' approach in the 2023 BNG calculation, which is not an approved methodology by DEFRA or Natural England and for which there is no guidance on how and when it should be utilized. It is this 'snapshot' approach that the Appellant relies upon to state in their SoC that they have exceeded the 10% target due to be applied to new applications from January 2024.
- 7.9 The Council will note that it was minded to accept this 'snapshot' approach as a pragmatic means of assessing BNG for minerals applications which are understood to involve changes to habitats over lengthy periods of time after which valuable habitats are often created as part of a restoration plan. But, the Council will note that this was on the basis that Biodiversity Net Gain could be delivered in a timely manner. The council will note that despite this skewing of the temporal multipliers in favour of the proposals, a net gain in biodiversity is not expected until approximately Year 30 and for 10% until between Year 30 and Year 35.
- 7.10 The Councils understanding is that a snapshot approach had been trialled by Industry, but primarily trying to look at minerals sites with existing planning permission looking for extensions, and that it was not designed for virgin sites or sites without extensive worked ground.
- 7.11 It is the opinion of the Council that the proposal failed to meet the requirements that minerals applications to other MPAs which employ the same Snap Shot approach have been able to meet. Significantly, this relates availability of land where habitat enhancement or creation could commence before the completion of the first phase of extraction. This means that cases such as *1/22/9005 An extension of the end date of extraction to 31st December 2032 for the continued working of a known mineral reserve, subsequent restoration infilling and ancillary*

aggregate recycling at Faugh Sandpit No.2. (Cumbria County Council) and 21/02505/CCMEIA -Extraction and processing of 5.8 million tonnes of sand and gravel and the phased restoration of the site to a lake and associated wetlands (Northumberland County Council) the applicants are able to begin creating new habitats without any significant delays.

- 7.12 The limited extent of land associated with the Horn Crag quarry, available for habitat enhancement or creation and lack of any suitable land close by or elsewhere and under the control of the applicant means for that purpose means that there is no opportunity to begin creating habitats until the first phase of extraction has ended.
- 7.13 The Council considers that the goals of the Snap Shot approach are to minimise the negative multipliers applied in the metric by delaying habitat creation and therefore there is an implicit acceptance by the Appellant that considerations of the time taken to provide habitat compensation and enhancement are of material significance.
- 7.14 The Council will demonstrate that options were given to the Appellant in the 2022 application regarding ways to boost the BNG, including offsite and/or commuted sum.
- 7.15 The Council will evidence why it considers there is inadequate information with regards to potential adverse impacts on Protected Species and why there is no indication of appropriate mitigation that would satisfy the requirements of a licence to disturb and be effective for the lifetime of the quarry.
- 7.16 Response to Appellants Statement of Case

7.17 The Appellant statement of case at 6.2 notes “*The site’s working scheme retains and protects the areas of highest biodiversity value and reinstates others at the earliest opportunity*”

Response by the Council

7.18 The Council will note that the lowland heath identified on the site, which is considered to be of “High Distinctiveness” for the purposes of Biodiversity Net Gain and is listed as a Habitat of Principal Importance (HPI) in Section 41 of the NERC Act, 2006 is the most valuable habitat present on the site and that all of this established habitat would be lost as a result of the proposals. Other habitats recorded on the site being: bracken, upland acid grassland and gorse scrub, none of which are considered High distinctiveness in the Biodiversity Net Gain approach and none of which are listed as HPI in Section 41 of the NERC Act, 2006. Therefore, the statement included in the Appellant’s statement of case is considered by the Council to be incorrect.

7.19 In light of the above it is the Council’s position that the development fails to meet the requirements of the Environment Act, 2021, the National Planning Policy Framework and Policy EN2 of the Core Strategy. It is also the council’s position that refusal of permission is fully pursuant with the council’s Biodiversity Duty to conserve and enhance biodiversity through its activities.

7.20 The Appellants statement of case at 6.2 states “...*The types of habitat proposed in the restoration scheme are comparable to other schemes approved by the Council in similar upland environments and are just as deliverable.*”

Response by the Council

7.21 The Council does not consider that there is any similar scheme approved by the Council in which the biodiversity value (in terms of both flora and fauna) is directly comparable in similar upland environments.

7.22 The Appellants statement of case at 6.5 states “*The Appellant’s experts will show that there is no loss of ‘irreplaceable habitats’ and that there is no permanent damage to an important wildlife network.*”

Response by the Council

7.23 The Council will not be pursuing the issue of ‘irreplaceable habitats’ at the Inquiry.

7.24 The policy basis is Core Strategy Policy EN 9 and EN10 E (3), which notes that it would be *likely* to lead to the permanent *disruption* of a significant ecological network. The Councils case is on the basis of likely occurrence and a disruption of significant ecological network (not damage) as noted by the Appellant.

7.25 With regards to the second part of EN 10 (3) i.e “... *likely ...permanent disruption of a significant ecological network.*” The Council will note that the proposal site is located wholly within the Wildlife Habitat Network, and the proposed quarry operation would remove a significant and connective section of that network for the duration of operation. Restored habitats in the southern, connecting section of the site will not reach the maturity of habitats currently on site and the proposed Moderate condition until around Year 42. The Council consider this length of time would likely to lead to the permanent disruption of a significant ecological network, the loss of this valuable connective habitat, represents a significant adverse impact on a biodiversity network which in light of the on-going biodiversity crisis is an unacceptable timeframe for the loss.

7.26 The Council considers that this adverse and long-term impact to the Habitat Network is not only in compliance with EN9 and EN10, but also Policy EN2 of the Core Strategy.

8.0 The Councils Case: Planning Balance

8.1 The Council will demonstrate that the planning balance has been applied by referencing the relevant paragraphs of the officer report.

8.2 Response to Appellants Statement of Case

8.3 The appellant states at 7.1 of their SoC that *“The determining officer appears to deviate from the development plan and concludes that there is no need for this site as there are enough existing building stone sites within the district.”*

Response by the Council :

8.4 this is a misinterpretation of the relevant paragraphs of the officer report and the Council will reference why it is arguable that there are more suitable/sustainable locations elsewhere in the Bradford district and wider West Yorkshire region, that meet all the criteria in Policy EN10 of the Core Strategy.

8.5 The appellant states at 7.2 of their SoC that *“...there is little to no evidence of the determining officer to applying the great weight they are directed to do so by the NPPF to the benefits of mineral extraction.”*

Response by the Council :

8.6 The Council do not concur with this statement. Para 36 and par 54 of the officer report specifically references the NPPF and the need to apply great weight - concluding in the section on principle, that general principles of minerals development, set out in the NPPF and the Bradford Local Plan, have been met (bar the locational criteria in Core Strategy Policy EN10 E (3)). The concluding comments under paras 148 -153 of the case officer report note the policies in the Local Plan support sustainable mineral extraction (the policies in the Local Plan being based on the NPPF) and the concluding comments also reference back to the whole report.

8.7 The appellant states at 7.3 of their SoC that “*The Appellant will also demonstrate that the scheme complies with the location tests of policy EN10..*”.

Response by the Council:

8.8 The Council will note in their evidence why the proposal does not meet the locational tests set out in EN10, as noted in the officer report, and further through the proofs of evidence.

9.0 Reference Documentation and Conditions

9.1 The list of documents the Council intend to refer to is noted at the end of this statement of case. The proposed conditions are also listed.

Response to Appellants Statement of Case

9.2 The Council note that the Appellant has provided a generalised references in their Statement of Case to documents they anticipate they will refer to. The Council has already noted that the Appellants SoC does not fully refence documents, literature of case law that they intend to rely on, as required by the procedural guidance.

9.3 The Council note that the Appellant has referenced on page 10 of their SoC *BMDC Site Allocations DPD – 2018* and *BMDC Emerging Local Plan (consultation draft February 2021)*

9.4 The BMDC Site Allocations DPD – 2018 is not an adopted document and no final conclusions were drawn from it.

9.5 The BMDC Emerging Local Plan (consultation draft February 2021) has very little weight and at the time of determination of the application subject of this appeal, it was at the Regulation 18 stage. Due to its very limited weight it was given no

reference in the case officer report and in the determination of the application. It is unclear in the Appellants SoC how this document is to be referenced as part of their case.

10. Conclusion

- 10.1 The Proposal is contrary to the statutory development plan and is in conflict with material considerations outside the development plan.
- 10.2 The MPA will respectfully invite the Inspectors to conclude that the application of the overarching statutory test requires that these Appeals be dismissed.

LIST OF DOCUMENTS THAT MAY BE REFERED TO:

1. The National Planning Policy Framework
2. Replacement Unitary Development Plan for the Bradford District (October 2005)
3. Bradford Metropolitan District Council (BMDC) Core Strategy Development Plan Document (DPD) 2017
4. Steeton with Eastburn and Silsden Neighbourhood Development Plan - June 2021.
5. The MPAs Case Officer report – dated 23rd May 2023
6. The application submitted under 23/00829/MCF, and relevant aspects of 22/01170/MAF (in particular hydrology and EHO response)
7. The pre-application response 20/01844/PMJ

8. Relevant correspondence between Carole Howarth, Agent and Applicant
9. The Private Water Supplies (England) Regulations 2016
10. The Private Water Supplies (England) (Amendment) Regulations 2018
11. Water Industry Act 1991,
12. Water Act 2003
13. The Environment Agency's approach to groundwater protection Version 1.2 dated February 2018
14. Hydrogeological Assessment Horn Crag Quarry by Hafren Water Ltd dated January 2021
15. Ref Planning Application Supporting Statement Horn Crag Quarry A.D. Calvert Architectural Stone Supplies Ltd. Document Reference: 232/5--R2.1- Supporting Statement 07/03/2023
16. Environment Agency Consultee response dated 24 April 2023
17. Environment agency consultee response dated 19 May 2023
18. Horn Crag Quarry A.D. Calvert Architectural Stone Supplies Ltd. Document Reference: 232/5--R2.1- Supporting Statement 07/03/2023
19. Response to Officer Queries No.1 Site: Horn Crag Quarry Proposal: Reopening Document Reference: 232/5/1—R1.1 – 20230425
20. Response to Officer Queries No.2 Site: Horn Crag Quarry Proposal: Reopening Document Reference: 232/5/1—R1.1 – 20230502
21. Response to Officer Queries No.3 Site: Horn Crag Quarry Proposal: Reopening Document Reference: 232/5/1—R1.1 V3 – 20230510
22. Response to Officer Queries No.3 Document Reference: 232/5/1—R1.1
23. Appeal Appellant's Statement of Case November 2023 Document Reference: 232/5—R1.1 – SoC
24. HAISTE INTERNATIONAL GROUP LIMITED Report Horn Cragg Quarry near Fishbeck near Silsden Water Supply 21st May 1984.
25. Decision notice Application 83/6/06858 21 FEBRUARY 1984
26. Decision notice Application 84/6/02257 11th September 1984
27. Report of the Director of Planning Application 84/6/2257 11th September, 1984
28. Yorkshire Water Memorandum by I C Barker dated 18th December 1986

29. Decision notice Application 86/6/02290 14th May 1986
30. Planning Officers Report Application 86-6-6567
31. Planning Officer Report Application 86-6-6567
32. Planning Report 86-6-02290
33. Decision Notice Application 86/6/06567 Dated 18th February 1987
34. Planning Officers Report 86/6/06567
35. Decision notice Application No.87/6/1914 dated 13th May 1987
36. Yorkshire Water Memorandum Mr. Ian Barker, Water Resources dated 6th April 1987
37. Committee Report application 84/6/02257 dated 11/09/04
38. Horn Cragg Quarry - Silsden, Proposal by. A.R. Briggs and Company, dated 15.4.86.
39. Position Statements N7, N8 and B3 of the 'The Environment Agency's approach to groundwater protection'
40. CBMDC LANDSCAPE CHARACTER SPD 1.10.2008. VOLUME 4 – ROMBALDS RIDGE.
41. HORN CRAG, LANDSCAPE AND VISUAL APPRAISAL. COLLINGTON WINTER ENVIRONMENTAL LTD. APRIL 2021.
42. Natural England (2014), National Character Areas (England), 36. Southern Pennines
43. Landscape Institute & IEMA (2013), 3rd Edition Guidelines on Landscape and Visual Impact Assessment
44. Technical Guidance Note 1/20 (10 Jan 2020) Reviewing Landscape and Visual Impact Assessments (LVIAs) and Landscape and Visual Appraisals (LVAs).
45. Landscape Institute- Technical Guidance Note 02/21 (02 2021) Assessing Landscape Value Outside National Designations
46. Biodiversity Net Gain - Good practice principles for development © CIEEM, CIRIA, IEMA, 2016.
47. Environmental Improvement Plan 2023, First revision of the 25 Year Environment Plan, Department for Environment, Food and Rural Affairs.

48. STATE OF NATURE, 2023, State of Nature Partnership, a collaboration between the conservation and research organisations.
49. Biodiversity Metric 3.1 Auditing and accounting for biodiversity -USER GUIDE - First published 21st April 2022 - Natural England Joint Publication JP039
50. 1/22/9005 An extension of the end date of extraction to 31st December 2032 for the continued working of a known mineral reserve, subsequent restoration infilling and ancillary aggregate recycling at Faugh Sandpit No.2. (Cumbria County Council)
51. 21/02505/CCMEIA -Extraction and processing of 5.8 million tonnes of sand and gravel and the phased restoration of the site to a lake and associated wetlands (Northumberland County Council)
52. BGS Minerals UK – BGS minerals resource map.