


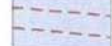







LEGEND

-  Site boundary
-  Existing sandpit faces
-  Restored phase
-  Landfill slopes at 1:3
-  Proposed final contours
-  Existing vegetation
-  Proposed tree and hedgerow planting



Wyn Thomas Gordon Lewis

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Client  
**RMC Aggregates (Southern) Ltd**

Project  
**RESTORATION OF BOROUGH GREEN SANDPIT**  
Drawing title  
**Restoration plan**

Scale 1:2 500	Date July 2003	Drawn EE
Checked GJ	Drawing No. 4393 : 08	Revision 0

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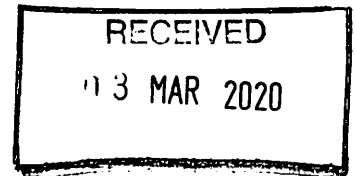
Town Planning  
Architecture  
Landscape Architecture  
Urban Design  
Economic Development

**BACKGROUND PAPER**



**Wrotham Parish Council Further Comments, 20 February 2020**

Ref: TM/19/1779 Section 73 application to vary HGV movements



Dear [REDACTED]

Thank you for your letter of 17 February 2020 on the procedural aspects of the proposal and your invitation to discuss further.

We note that the applicant has withdrawn aspects of the proposal that were outside of the remit of a Section 73 application concerning vehicle movements. Specifically they are no longer seeking to change the restoration contours of the quarry or the current phasing arrangements of the quarry backfill. In which case the following statements of timing are incorrect. Do we now know what are the correct dates?

***iii) Fill Programme***

*3.7 As per the current HGV allowance/fill regime at Borough Green Quarry, it is estimated that the quarry would be completely filled by 2025.*

*3.8 By uplifting movements to 240 HGVs per day, this would enable the quarry fill to be completed by 2024 (i.e. a year earlier than currently estimated). This would assist in facilitating the delivery of the Relief Road (through this parcel) and provide for increased flexibility and efficiency in terms of the delivery regime for housing.*

***Ref: Barton Wilmore Planning Statement***

We agree with your assessment that the Draft Local Plan can be afforded little weight as it has not been tested at Inquiry and there is some doubt that LP29 Borough Green Gardens is both lawful and deliverable given the timescales and that it is proposed to build on land that is currently still being quarried and some that is yet to be quarried.

We note your statement that there is a fall back position which is the TM/93/305 consent that does not have a condition relating to HGV movements. Effectively there is no limit to HGV movements in this consent and there is no reference to the recycling of materials.

We have asked our legal team for a preliminary opinion in this matter. It will be preliminary as we do not have all the applications documentation in some instances but we do have the consent documents. Also we have noted your request for a response in early March and we seek to oblige if possible.

Moving on we note you state that an application to reduce the consented levels of the quarry restoration would be made to the borough council. Why would that be the case as we note that KCC is the mineral planning authority and consequently has the appropriate skills and experience to make the necessary decisions on quarry restoration?

When Aylesford Quarry applied to reduce their restoration contours to provide 'development platforms' last year then the application was made to the MPA and was decided at a KCC Planning Applications Committee meeting; TMBC objected to the proposal but KCC still decided to grant.

Which planning authority would be responsible for a scoping inquiry as to whether an Environmental Impact Assessment is required?

The thirty per cent proposed increase in HGVs is particularly troubling as all of the HGVs are directed past a sensitive noise receptor at Wrotham School and then a highly sensitive noise receptor in Grange Park School. The school provides specialist provision for children and young people aged between 8 and 19 with an Autism Spectrum Condition (ASC) that prevents those children from attending general secondary schooling and makes them very sensitive to external disturbances.

We look forward to receiving your further comments and will revert back to you when we receive preliminary legal advice as mentioned.

Yours faithfully

[Redacted signature]

Clerk to Wrotham Parish Council

COPY	
25 DEC	4/3/20
ACA	-
LA	-
MT	

# Wrotham Parish Council

PO Box 228  
Sevenoaks  
TN13 9BY

██████████  
Clerk



Telephone ██████████

Ref: TM/0152

Email – ██████████

Date: 16 November 2019

**Planning Application Reference** TM/19/1779 (KCC/TM/0152/2019)  
**Applicant** Robert Body Haulage Ltd  
**Address** Wrotham Road  
**Proposal** To vary condition 7 of TM/14/2728 to increase HGV movements from 182/day to 240/day, an increase of 58 movements or 32% daily.

**Decision** Objection on grounds of Unlawfulness

**Addendum additional to WPC's previous comments and are made in the light of further emailed information supplied by Barton Willmore ("BW") on behalf of the Applicant and dated 22 Oct 19. The email addresses points raised by the Officer numbered 1 – 7 and this response is numbered similarly for ease of reference.**

## 1.0 Permitted Restoration Scheme

1.1 The Applicant confirms that the application's documentation is based on reforming the landscape into 'Development Platforms' that are considerably lower than the permitted restoration levels (Drawing "Restoration Contours"- 4393:07 -July 2003 - TM/93/305).

1.2 On that basis it was claimed that the backfill operation would be complete by 2025 with current vehicle movements and the increase in movements would allow completion in 2024.

*"3.7 As per the current HGV allowance/fill regime at Borough Green Quarry, it is estimated that the quarry would be completely filled by 2025.*

*3.8 By uplifting movements to 240 HGVs per day, this would enable the quarry fill to be completed by 2024 (i.e. a year earlier than currently estimated). This would assist in facilitating the delivery of the Relief Road (through this parcel) and provide for increased flexibility and efficiency in terms of the delivery regime for housing.*

**Ref: Barton Willmore Planning Statement June 2019**

The comments in paragraphs 3.7 and 3.8 are misleading, as they do not specify that they are predicated on unconsented changes in the permitted "Restoration Contours" of application TM/93/305.



1.3 The 2024/2025 timing is critical because Policy LP25 (Appendix E) of the proposed Draft Local Plan (“DLP”) sets out the Housing Trajectory for Borough Green Gardens (“BGG”) as completion of 40 dwellings in 2024/2025, 200 dwellings by 2025/2026, 440 dwellings by 2026/2027 and 760 dwellings by 2027/2028.

1.4 In the Statement of Common Ground (Ref: ED29 Draft Local Plan) BW, on behalf of the Quarry Owners, agrees the housing trajectory put forward by TMBC. BW does not make clear that the current consented restoration scheme cannot be achieved in the required timeframe for BGG proposal without significant changes to the consented restoration plans of the quarry that require further consents.

ED29

	Barton Willmore Comments	TMBC Comments	KCC Comments
<b>COMMON GROUND</b>			
Housing yield / trajectory - Do promoters agree with the council's view regarding the potential site yield as set out in Appendix E of the Local Plan?	Yes, the promoters agree with the Housing Trajectory for the site as set out in the Local Plan.	TMBC welcome the promoters' agreement with the Housing Trajectory.	KCC has no comment.
Construction start date – Do promoters agree with the estimated start date as set out in the Housing Trajectory in Appendix E of the Local Plan?	Yes, the promoters agree with the commencement of development on site and the date of first delivery (2024/25) as set out in the Local Plan Housing Trajectory.	TMBC welcome the promoters' agreement with the commencement date for construction on-site.	KCC has no comment.

1.5 In the 22 Oct 19 email of support for the Application BW confirms the time scale of what their technical experts JNP now consider a realistic timeframe for the completion of quarry restoration as consented by the TM/93/305 consent.

***“1. Permitted Restoration Scheme***

*As you have identified in your email, the submitted Earthworks Strategy (JNP) addresses the timescale for establishing complete development platform levels at the Site in order to facilitate the Borough Green Gardens development.*

*As per your request, JNP has reviewed the permitted restoration levels (shown on drawing “Restoration Contours”- 4393:07 –July 2003 – TM/93/305). It should be noted that the permitted restoration levels will be set at a higher level than development platform levels and will therefore require a greater extent of fill.*

*As per the existing fill regime at the Site (182 HGV movements per day), it is estimated that the extant restoration level will be reached within 8.5 years (i.e. by 2028). With the benefit of the proposed uplift in HGV movements (240 HGV movements per day), JNP anticipates that completed restoration levels at the Site will be achieved within 6.5 years (i.e. 2026).”*

**Ref: Barton Willmore email to KCC Planning 22 Oct 19**

1.6 By mid 2028 Policy LP25 and LP29 of the DLP requires 760 dwellings completed in Phase 1A as well as the complete 'Relief Road' from Darkhill Roundabout to Nepicar. Phase 1A of the DLP is the Application Site.

1.7 If the current application for HGV movements only, were consented, then restoration would take until mid 2026 to complete. The same DLP policies would require 440 dwellings and the imminent opening of the Borough Green Relief Road in its entirety.

1.9 The only conclusion possible is that the Applicants Technical Advisors have confirmed that the BGG proposal is undeliverable without further consents to:

- a) A 32% increase in daily HGV vehicle movements.
- b) An application to significantly reduce the consented restoration contours into 'development platforms', there by reducing the amount of backfill required and the timescale of restoration.

## **2. Relevance of Borough Green Gardens**

2.1 The Applicant asserts that "*expedited backfill which will help in the delivery of the Relief Road as well as the establishment of development platforms for housing delivery at the Site*" and that "*Borough Green Gardens is now formally part of the Government's Garden Communities Programme with Homes England*". It is contended "*this should be weighed favourably in the planning balance*".

2.2 BGG proposal is undoubtedly important to the Applicant and their agents BW, but fundamentally it must pass basic tests about deliverability in terms of timing and be lawful. The DLP was submitted in January 2019 and still does not have a date for an Inquiry. The evidence base for sustainability analysis was lacking as was the analysis itself and the Inspectors have requested a significant quantity of additional work by the LPA particularly around the decision to prioritise such a large part of the plan in a Green Belt area and partially within the AONB and totally within it's setting. The current situation is that the Inspectors have required the LPA as follows:

1. To agree to 'Main Modifications' to the DLP.
2. To agree to another round of Public Consultation in order to allow the public to consider the significant amount of new evidence and analysis and this has recently commenced.
3. To agree to reconsider the DLP and all of its policies including the principal sites in the light of that consultation process.

2.3 The Inspectors have 'significant concerns' which are centred on the BGG proposal as follows.

*"However, notwithstanding all of this, our significant concerns with regard to parts of the evidence base, particularly that relating to the Green Belt, sustainability appraisal and the site selection process remain. Having considered carefully the best way forward, we have decided to proceed to hearing sessions but taking a phased approach. The first phase of hearings will broadly cover the following:*

1. *Legal compliance and procedural matters, including the duty to cooperate (this is to ensure that any potential 'show-stopping' legal problems that we are unable to rectify are explored first)*
2. *The Green Belt*
3. *The site selection process, including the sustainability appraisal"*

**Ref: ED32 Inspectors to TMBC 12 Sep 2019**

2.4 The Inspectors have decided to split a forthcoming Inquiry into two sections, the first being 3 days to consider the most challenging aspects of the plan. No date has been set for this, as they first want the LPA to review the consultation comments and decide whether the DLP requires modification. The second part of the Inquiry is therefore dependant on the outcome of the first.

2.5 The Applicant acknowledges that due to the early stage of the DLP, which has not been tested at Inquiry, the proposal cannot be afforded significant weight but they then indulge in semantics by affording it 'material weight' apparently because it is a significant part of the DLP. They do not consider, for example, that the site may well become a 'Major Modification' and give way to one of the alternative sites that are not within the MGB or setting of the AONB.

### **3.0 Permitted Recycling Operations**

3.1 The Applicant alleges that recycling operations will continue; however neither the Vectos Transport Statement or the JNP Volumetric Analysis and HGV Trip calculations take any recycling operations into account.




*"The current activities on site are limited to backfilling of the quarry through the importing of inert materials." Ref: Vectos Transport Statement*

## 2.3 Anticipated Vehicle Movements

2.3.1 Of the above two scenarios, facilitating the complete filling of the pit in one continuous operation, is the preferred solution.

2.3.2 The analysis is predicated on the sole use of 20 tonne 8 wheeler lorries which would carry a net, fully compacted, volume of suitable fill of 11m<sup>3</sup>.

### *Preferred Scenario Completely Filling Pit to Anticipated Development Platform*

 Under existing Permission at a rate of 91 vehicles in per day	6 years
 Increasing to 120 vehicles in per day	5 years
 Increasing to 150 vehicles in per day	4 years

2.3.3 In engineering terms, this presents the best possible solution and carries the lowest risk, if any, of differential movement between layers/areas of compacted fill.

### ***Ref: JNP Volumetric Analysis and Vehicle Trip Movements Analysis***

3.2 It is clear that none of the consented vehicle trips have been set aside for recycling operations. The Applicant alleges as follows.

*“The increase in HGV movements will enable a greater degree of recycling to occur from the Site and this is considered to be a further environmental benefit of the application proposals.”*

***Ref: Barton Willmore email to KCC Planning 22 Oct 19***

3.3 Since none of the Applicant’s Expert Reports have built in an allowance for HGV movements to carry out recycling operations then it is clear that recycling has stopped in the rush to backfill the site. The alleged ‘environmental gain’ is a significant disbenefit to the County Council as the loss of recycled secondary aggregates across the complete site will require significant quantities of fresh dug aggregates from the County Council’s reserves.

## 4.0 / 5.0 & 6.0 Air Quality Noise and Vibration

Please refer to section 4.0 HGV Transport and 5.0 Accumulation Effects of Multiple HGV Generators of WPC’s Objection Letter dated 18 August 2019.

## 7.0 Scope of the Current Application (KCC/TM/0152/2019)

7.1 The application is made under Section 73 of the Town and Country Planning Acts to vary Condition 7 of a consented application TM/14/2728. The operative wording describes the application KCC/TM/0152/2019 as follows.

*“Section 73 application for the variation of Condition 7 of planning permission TM/14/2728 to allow for a combined total of up to 240 HGV movements per day (120 in/120 out) to take place associated with all operations and uses at the site (including landfill, recycling and restoration)”*

***Ref: Proposal from KCC’s Planning Portal***



7.2 Ostensibly this is a simple application to vary traffic movements if you take the literal meaning. The traffic movements being associated with “all operations and uses at the site” and it lists those operations that the traffic movements are associated with.

### Application TM/14/2728

7.3 Condition 7 states as follows.

*“7. HGV movements associated with the quarry restoration, landfill and recycling operations shall, together, not exceed 1B2 HGV movements per day (91 in 91 out).”*

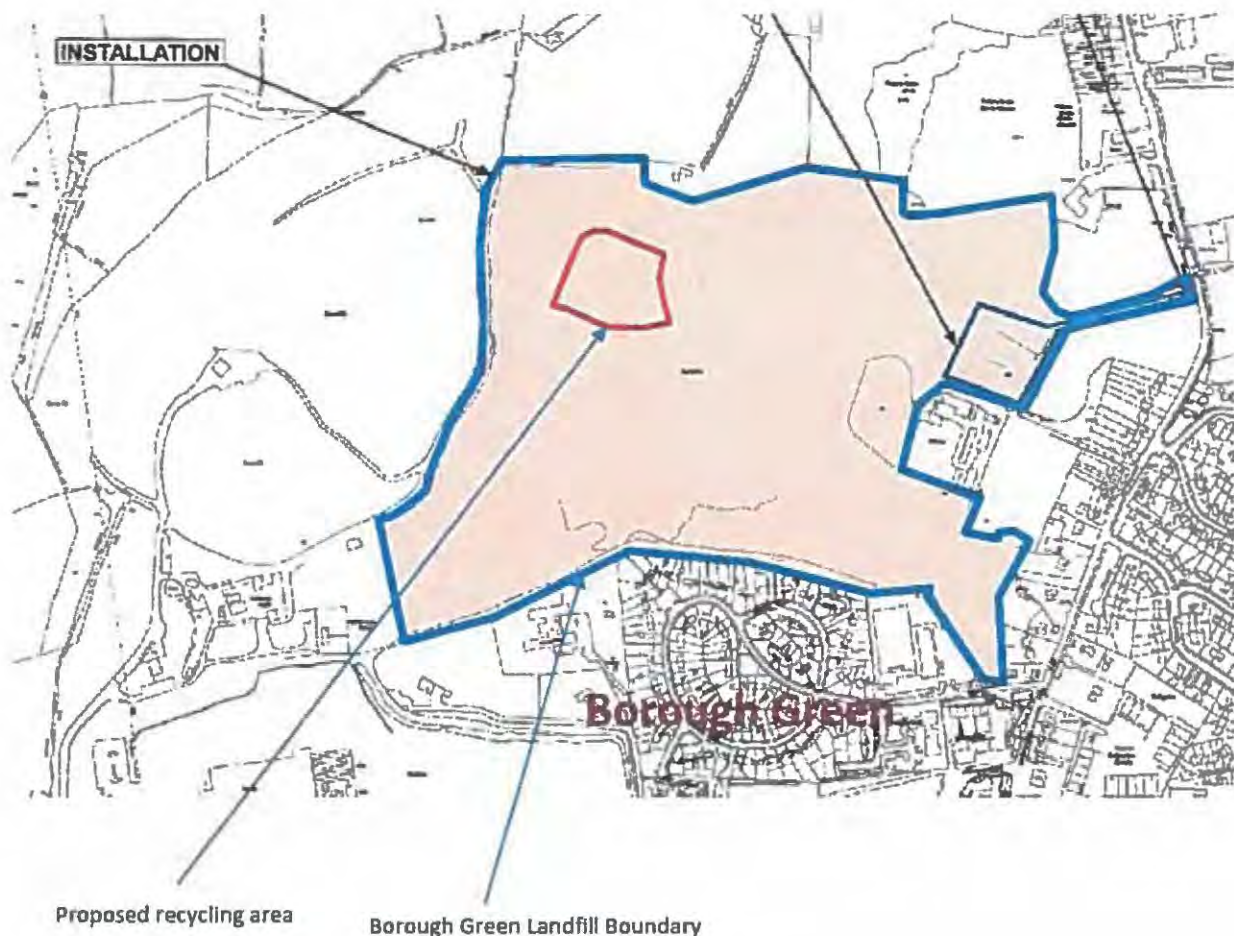
**Ref: Condition 7 from Decision Notice for TM/14/2728**

7.4 The operative wording of this application is as follows.

*“Application to relocate and raise the ground level for the recycling operations and for the permanent presence of recycling plant in the recycling area for the duration of landfilling”*

**Ref: Proposal /Operative Wording of TM/14/2728 from KCC's Planning Portal**

The application was to provide a permanent recycling facility at a raised level to the previous one and on a defined area of the site, which is small in relation to the whole site and defined in the Site Location Plan No 1020.





A letter from the Applicant's Agent provides further explanation on the scope of the application.

*"Further to our discussions and site meeting this letter has been written to support a planning application to move and raise the level of the permitted recycling area on site and to retain recycling plant on site for the duration of landfilling works as opposed to being used on a campaign basis."*

"Cemex effectively mothballed the site prior to RBH taking over and the recycling area had several stockpiles of materials present. When these materials were moved the ground elevation was found to be 69-70m AOD, which is in excess of the approved level of 62m AOD. Therefore, consultation was undertaken with Kent County Council (KCC) to submit a planning variation to raise the approved elevation. During pre-application consultation it was revealed that operations has also moved further to the west outside the approved recycling area and a new application was required." Ref: Foresite Projects letter to Officer: 4 Jul 2019

The permanent recycling area within the red line and established by this application would generate additional HGV movements to import suitable waste materials and to export the secondary aggregates that can replace fresh dug materials in some groundwork requirements. Hence Condition 7 of the application raised the quarry movements to 182 per day.

#### Current Application (KCC/TM/0152/2019)

7.5 The site for this application is defined by the Site Location Plan, drawing no ET-P-02 and it is clearly the majority of land within the ownership parcel and a much greater area than the original application (TM/14/2728) amended.





7.6 The operative wording of the application only refers to a variation in vehicle movements if it is read literally. It is when the various reports and emails are read in detail it becomes apparent that the actual proposal is far greater and more extensive than the operative wording of the application that is being applied for. For example:

*1.1.4 The attached drawings indicate areas of proposed cut and fill and provide guidance on possible finished ground levels. These have been derived in consultation with Surface Water Drainage and Flood Risk Engineers at JNP Group, to ensure developability.*

*2.2.3 Note that the anticipated build platform level is lower than the original restoration level. Thus the volume of fill required will be less than for the original restoration plan.*

*2.2.6 The above two scenarios were chosen to give the upper and lower bound estimates. The existing filling rate permission allows for the pit to be backfilled sectionally, with filling in some parts completed in advance of other parts of the pit. Allowing the pit to be filled completely in an even manner would allow best engineering practice and efficiencies to prevail, as well as providing increased flexibility for the Borough Green Gardens development.*

**Ref: JNP Outline Accelerated Earthwork Strategy for Robert Body Haulage Quarry Pit**

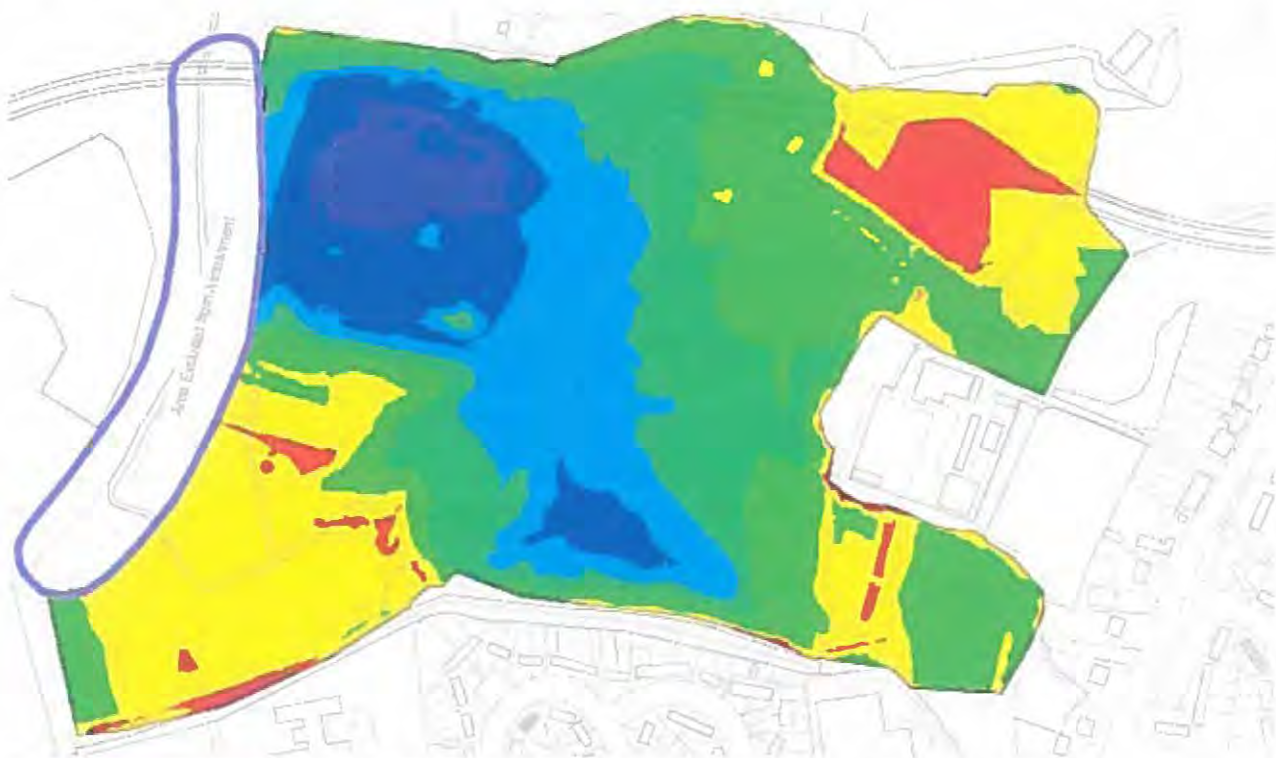
7.7 There are three topographical type drawings as appendices to the JNP Accelerated Earthwork Strategy that defines levels in terms of colour as follows.

Draw No

C85795-SK-012 Pit Existing Surface Levels, no road detail

C85795-SK-010 Development Platform Levels with details of a road

C85795-SK-011 Proposed levels necessary for Relief Road including road and junction detail



**Ref: Appendix B: C85795-SK-010 RBH Pit Fully Filled Plan**

7.8 The map is the 'fully filled plan', a somewhat ambiguous term that appears to refer to a plan of the final levels the application is seeking to achieve and this assumption is supported by the inclusion of a road and junction in the form of a roundabout with the A227. The report refers to these final levels as 'Development Platforms'. The area included is all of the site apart from a strip along the west of the site.

7.9 It is now confirmed by the Officer's email and the response from the Applicant that the scope of the application is extensive and the proposed development platforms would lower the levels of the consented "Restoration Contours"- 4393:07 –July 2003 plan. This is primarily to reduce the amount of backfill required in order to carry out the backfill operation in a timescale that fits in with the requirements set by TMBC for BGG proposal.

*As you have identified in your email, the submitted Earthworks Strategy (JNP) addresses the timescale for establishing complete development platform levels at the Site in order to facilitate the Borough Green Gardens development.*

*Ref: Barton Willmore email to KCC Planning 22 Oct 19*

## 8.0 Case Law Applicable to the Current Application

8.1 In case law there is a distinction between the "operative part" or grant of the planning permission on the one hand, and the conditions to which the operative part or grant is subject. The distinction between these two parts of a planning permission is reflected in other provisions of the 1990 Act. The grant identifies what can be done, what is permitted, whereas conditions identify what cannot be done.

8.2 The current application (KCC/TM/0152/2019) seeks to change Condition 7 of TM/14/2728 to increase the vehicle movements apparently. However, under questioning by the Officer, the Applicant has conceded that they seek the following.

1. To increase vehicle movements.
2. To change the consented restoration contours as defined by Plan 4393:07 of consented application TM/93/305, dated July 2003.
3. To change the consented phasing of backfill from a section-by-section approach to one of complete fill.

8.3 The operative wording of this application is as follows.

*"Application to relocate and raise the ground level for the recycling operations and for the permanent presence of recycling plant in the recycling area for the duration of landfilling"*  
*Ref: Proposal /Operative Wording of TM/14/2728 from KCC's Planning Portal*

This application pertains to a small area of the site and details a permanent recycling operation to be established at a prescribed ground level.



8.4 Some relevant case law judgements are as follows.

Supreme Court judgment in *Lambeth LBC v SSHCLG [2019] UKSC 33*, where Lord Carnwath said: "A permission under section 73 can only take effect as an independent permission to carry out the same development as previously permitted, but subject to the new or amended conditions." {Emphasis added}

*Cadogan v SSE (1992) [65 P & CR 410]* "A condition on a planning permission will not be valid if it alters the extent or the nature of the development permitted."

8.5 The current application seeks to use a Section 73 application to modify a condition to vary traffic movements. The 'operative wording' of the application (TM/14/2728) is applicable to a small area of the site that establishes a recycling centre at a prescribed level. If we consider the 'same development as previously permitted', then the following would fall outside of this definition.

1. The restored levels of a quarry that have been authorised by a different consent.
2. The phasing of backfill of a quarry that have been authorised by a different consent.
3. Any changes in the development outside of the red line in Site Location Plan No 1020 of TM/14/2728
4. Traffic movements associated with aspects of the quarry that are required for reasons other than recycling.

To consent this application would be contrary to the guidance provided by Lord Carnwath in the Supreme Court judgment in *Lambeth LBC v SSHCLG [2019] UKSC 33*

8.6 The County Council is being asked to consent a revised condition that will alter the 'extent and nature' of the development permitted. This would be contrary to clarification provided in *Cadogan v SSE (1992) [65 P & CR 410]*.

## 9.0 Conclusions

9.1 To consent application KCC/TM/0152/2019 would be unlawful.

9.2 The comments in paragraphs 3.7 and 3.8 of the BW Planning Statement are misleading because they do not specify that they are predicated on unconsented changes in the permitted "Restoration Contours" of application TM/93/305.

9.3 The Applicant uses the BGG proposal as special case justification for this application even though it is conceded, "at the current time, we consider (agree) that the Borough

*Green Gardens proposal cannot be afforded significant weight*". In planning terms this would appear to be somewhat perverse.

There are no justifications given other than the BGG proposal, the amount of housing it might provide, the percentile of the overall housing plan and the fact that it may be eligible for Gov funding but only if it is lawful and deliverable as determined by an Inspector at a Planning Inquiry, which has not been tested yet.

9.4 The Applicants dependence on an alleged 'planning balance' gain that is reliant on the success of the BGG proposal within the DLP, makes the potential success of that BGG proposal relevant to this application.

9.5 BW, the agent representing the Applicant for Phase 1A of the BGG proposal has agreed to comply with a housing trajectory with both TMBC and KCC in the Statement of Common Ground without qualification. It is now clear that the Applicant is not in a position to do this without extensive and time consuming further planning applications that need consents, there is no certainty to the outcome, and there is an imminent Inquiry in the New Year that will focus on the deliverability of the BGG proposal.

9.6 In the area covered by Phase 1B of the BGG proposal there is considerable time dated photographic evidence over a twelve month period that strongly suggests that the quarry involved in Phase 1B has increased vehicle movements to levels considerably above those consented and operating them outside of permitted time constraints. All of the evidence is now in the possession of the County Council. This would indicate that this phase is also struggling to meet TMBC's required timetable for housing and provides further evidence as to the potential undeliverability of the multiple sites that collectively constitute the BGG proposal site.

9.7 The 'Relief Road' is to be constructed and operational from the Darkhill Roundabout in the west to Nepicar in the east, including two large primary road network roundabouts during Phase 1A and before the completion of just 450 dwellings. It will need to cross current active quarries and as yet virgin unquarried land within the County Council's Mineral Plan reserves.

At present there is no legal framework within which the Quarry Owing Consortium or their agent BW are giving legally binding guarantees to the County Council and the Borough Council. The project is not developer lead and is without costing to demonstrate its deliverability.

This is made apparent by the 'Statement of Common Ground' comments made by BW and now found to be untrue. There can be no guarantee that the BGG proposal can be deliverable from the evidence to date, that the Borough Council's housing trajectory can be complied with. The current Applicant's technical advisors JNP, have provided proof that Phase 1A is undeliverable without significant further quarry applications needing to



be consented. These would require a further Scoping Survey and possibly be also dependant on the outcome of an Environmental Impact Assessment given the far-reaching implications for environmental issues that are being proposed.

9.8 The evidence from expert's reports suggests that the Applicant has ceased recycling operations on the site. This would be a logical conclusion given that they are desperate to increase backfill to comply with a TMBC timetable that they are currently missing by around 4 years. It would also be logical to assume that other quarries have come to similar conclusions. The lack of any recycled secondary aggregates will significantly increase the need for fresh dug minerals to the detriment of the County Council's reserves. This issue needs to be fully explored by the applicant's technical advisors JNP in a future application report, should one be forthcoming.

9.9 Given that this application is unlawful, the outcome further diminishes the prospect of BGG being considered to be deliverable within the DLP. It also diminishes the prospect of further applications that are solely dependant on the alleged planning balance benefit of BGG being successful, prior to an examination by the appointed Inspectors.

**Wrotham Parish Council**[REDACTED]  
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Sevenoaks  
TN13 9BY

Telephone [REDACTED]

Email – [REDACTED]

Ref: KCC/TM/0152/2019

Date: 18 August 2019

**Planning Application Reference** KCC/TM/0152/2019**Address** Wrotham Road  
**Proposal** To increase vehicle movements**Decision** Strong Objection**Comments :****Contents**

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- 4.0 HGV Transport Assessment**
- 5.0 Accumulation Effects of Multiple HGV Generators**
  - Noise
  - Air Quality
- 6.0 TMBC Draft Local Plan**
- 7.0 Conclusions**

**1.0 Introduction**

1.1 The applicant seeks to vary condition 7 of TM/14/2728 to increase HGV movements from 182/day to 240/day, an increase of 58 movements or 32%.

1.2 Extraction of minerals ceased some time ago and the current operations on site are:

1. Recycling of imported materials.
2. Backfilling the cavity with imported inert materials.

1.3 The stated objective of the HGV movement increase is to increase the rate of backfill of the quarry to facilitate the following.

1. To enable the quarry to be completely filled by 2024.



2. This in turn would facilitate the “Establishment of development platforms for the future Borough Green Gardens (“BGG”) Development”
3. In addition, it would “facilitate the delivery of the BGG Relief Road through this parcel”.

## 2.0 Earthworks Proposals

2.1 The Applicant has appointed John Newton & Partners (“JNP”) to undertake a 3D volume assessment of this pit to see what quantities and hence timescales might be appropriate to achieve a completion of backfill a year earlier in 2024.

2.2 Paragraph 2.2.3 of the JNP Reports states, *“Note that the anticipated build platform level is lower than the original restoration level. Thus the volume of fill required will be less than for the original restoration plan.”* This statement appears to imply that a new application will be required to agree to a variation in the consented Restoration Plan.

2.3 This is confirmed by paragraph 2.2.6 that states.

*“2.2.6 The above two scenarios were chosen to give the upper and lower bound estimates. The existing filling rate permission allows for the pit to be backfilled sectionally, with filling in some parts completed in advance of other parts of the pit. Allowing the pit to be filled completely in an even manner would allow best engineering practice and efficiencies to prevail, as well as providing increased flexibility for the Borough Green Gardens development.”*

The existing restoration consent requires a phased sectional approach. The report contends that this approach is poor and that the pit should be filled in an even manner, which would conform to ‘best engineering practise’ and allow ‘efficiencies to prevail’. This again would require changes to the consented Restoration Plan.

2.4 The report considers two scenarios, the first being a partial advance backfill along the line of a future road only to facilitate BGG Development and the other across the whole site to levels required for ‘build platform levels’ suitable for building housing and a level for the road to facilitate BGG Development.

2.5 Neither scenario conforms to the current restoration plan and there is no mention of a future planning application such that the new restoration levels and associated phasing could be considered. There is also no final levels plan that would result from these unevidenced proposals.

2.6 The report predicts the following timescales with reference to HGV movements.

*“Preferred Scenario Completely Filling Pit to Anticipated Development Platform*

- Under existing Permission at a rate of 91 vehicles in per day 6 years
- Increasing to 120 vehicles in per day 5 years
- Increasing to 150 vehicles in per day 4 years”

2.7 The report concludes that an increase in movement would accelerate backfill but is not prescriptive as to the number and then appears to imply that the increase allows backfill 'evenly' across the site as opposed to the current phased approach.

2.8 The Report states that backfilling is the only current operation and a study of the report's calculations will show that no account is made of the recycling operation. It appears to have been stopped so as not to divert the limiting HGV movements from backfill operations.

### **3.0 Relevant Planning History**

3.1 The following applications are relevant.

**TM/06/2171** Recycling of inert waste / crushing and screening to produce secondary aggregate. This allowed an increase in movements to 110 movements per day.

**TM/08/3715** Allowed an increase in vehicle movements from 110 to 182 movements per day. The accompanying Cemex Report stated as follows.

*"Planning permission TM/06/2171 was approved subject to 12 planning conditions which included vehicle movements being restricted to 110 per day including vehicles entering the site as part of the infilling operation. It was considered that the approved vehicle movements were too restrictive and would hinder restoration therefore an application was submitted to increase vehicle movements at Borough Green Landfill Site."*

**Ref: Cemex Report- BOROUGH GREEN LANDFILL / RECYCLING- VARIATION OF CONDITION 6**

3.2 The quarrying and subsequent backfill operations operated satisfactorily utilizing 110 movements per day.

3.3 When recycling was consented it was found that extra movements were required to facilitate the extra movement of inert materials to be crushed and then re-exported as secondary aggregate and the MPA increased daily movements to 182.

3.4 We now have a circumstance whereby recycling has stopped to facilitate backfill and the applicant seeks to increase HGV movements to 240/day. This is an increase of 130 movements a day over what was previously accepted as adequate for quarrying and backfill purposes without recycling.

### **4.0 HGV Transport**

4.1 The Vectos report confirms the current operations on site. "The excavation of minerals has now been completed and the current activities relate only to the site backfill with the inert material." **Ref: Para 1.6**



4.2 This proposal is to increase traffic movements per working day due to the backfill operation by 58 movements, which is an increase of 32%.

4.3 There is an informative that asks the quarry operators to make best endeavours to persuade drivers to leave the site to the north on the A227. The quarry has relatively little control over driver's route in under planning constraints. In practise this works for a percentage of drivers but in the experience of Members of WPC, by no means all.

4.4 The Vectos figures for the number and hence percentage of HGVs at present is 5.4% if you use the ATC generated figures. Most roads with a normal distribution of traffic carry between 2% and 3% of HGVs. This larger percentile is not surprising when you consider the number of local quarries and the H+H Block Works. Local quarries and quarry related industry that contribute to significant HGV movements in the locality include the following.

Borough Green Landfill: subject of this application

Borough Green Sandpits: access onto the A25 at Platt

Park Farm Quarry: Now quarrying clay & sand following recent consents

Nepicar Park Quarry: adjacent on the A25

Wrotham Quarry: Operated by Ferns & located in Addington

H+H Celcon Aerated Block Works

## 5.0 Accumulation Effects of Multiple HGV Generators

5.1 It is self evident that multiple HGV generators as outlined above considerably increase the percentile of HGV traffic on a road as exhibited by the Vectos report. If those inflated numbers of HGVs due to quarrying are used as a base for comparison with the 58 extra HGVs proposed by this application then the resulting 1% increase is statistically relatively meaningless. The greater the number of existing HGVs using the road the less percentile the increase will be.

5.2 The period that Vectos measures HGVs is from 07:00 to 18:00 but discounts 1.5 hours for school access periods and this totals 9.5 hours or 570 minutes per day. Vectos daily average for HGVs is 389, which equates to **7 HGVs every 10 minutes** and the proposed increase equate to an additional **1 HGV every 10 minutes**.

## Noise

5.3 When HGVs turn north on the A227 as encouraged, they first pass Wrotham School classed as a 'sensitive noise receptor' and then past Grange Park School for the most challenging pupils on the Autistic Spectrum, those that are unable to cope with a Special Needs classification within regular schooling. This is classed as a 'highly sensitive noise receptor'.

## **Air quality**

5.4 The vehicle movement calculations are based on '20 tonne, 8 wheeler tipper trucks', which are the workhorses of the aggregates industry, and not known for their quiet operation. The volume of HGV vehicles passing these noise sensitive receptors is currently 42 per hour rising to 48 per hour if this application is consented. Additional to this is the average non-HGV vehicles, cars, vans and motorbikes etc that total 6,766 in a Vectos specified day.

5.5 One of the effects of the quarrying in the area and the intensification of HGV traffic is the poor air quality. There is an Air Quality Management Area ("AQMA") encompassing all of the centre of Borough Green and another AQMA which begins on the A25 at Darkhill Roundabout adjacent to the H+H Factory and continues through Seal, Bat and Ball, past Sevenoaks and to the end of Riverhead.

5.6 TMBC has not tested air quality in the Wrotham area around the Gravesend and Whitehill Roundabouts in the routing path of quarry lorries, but the general queuing and slow moving traffic in those areas make adverse air quality highly probable. The Parish Council has commissioned AQ experts who are currently carrying out tests to inform the responsible authority, TMBC.

## **6.0 TMBC Draft Local Plan**

6.1 The BGG development is a strategic site policy (LP29) in the Draft Local plan, which was submitted in January 2019. The proposed site for BGG is a number of quarries that form a band to the north of Ightham, Borough Green and Platt and south of the M26. Most of the quarries are actively quarrying sand or clay and are at an earlier stage in the quarrying cycle than the Application Site. Some areas towards Nepicar are yet to be quarried. An essential requirement of sites put forward in the Local Plan is their deliverability and assurances, that all of the quarries will be available for actual development in 2024 have been given by the consortium of quarry owners to both TMBC and KCC as the MPA, most recently in a Statement of Common Ground. The statement was not qualified by requirements to change conditioning to achieve this objective.

6.2 This application appears to contradict those assurances as the phasing is due to start in 2024 with the building of a road and critically the Application Site will not be ready until 2025 under the current consented plan. This quarry is the most advanced in the quarrying cycle, being already at a backfill/recycling stage currently. The other quarries are actively quarrying at present. Given that a road is required from the A25 Darkhill roundabout to Nepicar A20 at an early stage once 450 dwellings are occupied then the proposal appears unrealistic without significant changes to conditioning.

6.3 Most of the quarries further along the chain have current completion dates far in advance of 2024 so presumably there will be many more applications to vary conditions

that seek to increase HGV Movements and stop recycling of secondary aggregates. This would put considerably more stress on the local road network.

6.4 The Planning Statement, para 4.2 states. *“It is recognised (at the time of writing) that the emerging Plan does not carry significant weight for the purpose of decision making.”* Although submitted in Jan 2019 the Inspectors have required substantial clarifications and a considerable amount of further evidence to be prepared by TMBC and this process continues. Consequently, there will have to be further public consultation and TMBC will have to consider the results and potentially modify policy accordingly. Inspectors have advised TMBC that they may need to make “major modifications” that effects strategic sites and TMBC have agreed. There is also a conflict over the redaction of public data from consultees that is inhibiting the public's ability to comment as a group and Inspectors have indicated that if an acceptable solution is not forthcoming, they will not be able to continue with the Inquiry. Therefore, at present there is no date set for the Inquiry and no certainty that the examination of the plan will proceed. In the event it does there is no certainty that Policy 29 could be one of the Major Modifications necessary.

## **7.0 Conclusions**

7.1 The Planning Statement seeks to increase vehicle movements and to change both the quantity of backfill and the levels, phasing and form of the restoration land profile. This appears to fundamentally change the whole consented restoration plan.

7.2 Paragraph 2.2.3 of the JNP Reports states, *“Note that the anticipated build platform level is lower than the original restoration level. Thus the volume of fill required will be less than for the original restoration plan.”* If the required fill is less than that consented and there is no corresponding application to justify this contention then the calculated vehicle movements and consequent reduction in time of one year to completion is fundamentally flawed.

7.3 Clarification is needed as to the scope of the application as the submitted evidence base for the application is completely inadequate to justify a reduction of backfill.

7.4 The Vectos report and the JNP Report both refer to the only current operation on site being the backfilling. The JNP Report calculates the reduction in time based on all of the allowed HGV movements being used for backfilling; the assumption is that the recycling of materials has stopped.

7.5 This has significant implications for the MPA as there is no secondary mineral production to replace the use of dug minerals where possible. Presumably the MPA has calculated the quantity of reserves and therefore the life of it's Mineral Plan on the basis of some element of recycled aggregates being regularly produced and used in suitable applications.



7.6 The original HGV movements during both the quarrying and backfill sequenced stages pre recycling were 110 HGV/day. Two years after recycling was consented the Applicant applied for and was consented movements of 182 HGV/day to allow for 72 for recycling purposes. Now there is no recycling so the backfill operation actually requires 110 HGV/day to finish to the current consented timetable and yet the applicant is applying for an extra 130 HGV/day to complete backfill early.

7.7 There is considerable uncertainty as to whether Policy LP29 (BGG) the allocation of 3,000 dwellings will go forward through to examination and even whether the Draft Local Plan will be examined at present even after 7 months of consideration. Given that the alleged benefits of this allocation is the only reason brought forward in favour of the proposal then this merits little in consideration of the planning balance.

7.8 If the Application were to be consented then this would set a poor precedent as the most advanced quarry in the cycle having to alter conditioning to comply with a deliverability objective that the Quarry Owner Consortium stated was achievable to both KCC and TMBC in their Statement of Common Ground for LP29.

7.9 What could follow are many more applications to increase HGV movements that will be necessary to speed up the quarrying and backfill process at the expense of recycled aggregate production and the public's amenity in terms of air quality and noise.

7.10 The overall effect will be to bring forward the speed of quarrying such that the MPA's sand and clay reserves will be eroded far quicker than predicted by the Mineral Plan.