

Report of the Head of Planning, Green Spaces, and Culture

Address:	LAND AT MOORBRIDGE FARM AND BEDFONT COURT ESTATE, WEST OF STANWELL MOOR ROAD
Development:	Use of land for the extraction of sand and gravel, filling with inert waste and restoration to agriculture including associated works. (Application for a Certificate of Appropriate Alternative Development under Section 17 of the Land Compensation Act 1961, as amended)
LBH Ref Nos:	69073/APP/2013/637
Drawing Nos:	dt/12598/b Conceptual Access Design
Date Plans Received:	14-03-2013
Date Application Valid:	14-03-2013

1. SUMMARY

In 2002 a compulsory purchase order was made acquiring land to build the Heathrow Terminal 5 spur road to the M25 motorway. The Applicants have applied for a Certificate of Appropriate Alternative Development to assist with the valuation of the land. The Council as Mineral Planning Authority for the land is required determine the application and issue a certificate accordingly, after considering what uses of this land are appropriate in general planning terms at the relevant date. This is not an application for planning permission.

This application seeks a Certificate of Appropriate Alternative Development, which is an application for a certificate under s17 of the Land Compensation Act 1961. This is a land compensation valuation procedure following confirmation that the land is to be/has been compulsorily acquired. Under the terms of the Land Compensation Act 1961, the appropriate alternative uses of the land have to be considered in a 'no scheme world' by considering what land uses might have been permitted had the land not been compulsorily purchased (i.e. that at the time of the decision to compulsorily purchase the land there was no proposal for T5 at Heathrow Airport and thus no link road was required connecting the M25 motorway to T5). For the purpose of this application the relevant date is the 9th May 1996, which is the date on which the draft Compulsory Purchase Order was published. The order related to land required for the purpose of constructing a spur road connecting Terminal 5 at Heathrow Airport to the M25.

In relation to the consideration of applications for alternative appropriate developments Circular 06/2004 "Compulsory purchase and the Criche Down Rules" Paragraphs 8 and 9 of Appendix P state:

"8. The First Secretary of State ('the Secretary of State') considers it important as far as possible that the certificate system should be operated on broad and common-sense lines; it should be borne in mind that a certificate is not a planning permission but a statement to be used in ascertaining the fair market value of land. An example of how the system could work might be where land is allocated in the development plan as part of an open space or a site for a school, and is being acquired for that or a similar purpose. If there had been no question of public acquisition, the owner might have expected to be able to sell it with

planning permission for some other form or forms of development. The purpose of the certificate is to state what, if any, are those other forms of development. In determining this question, the Secretary of State would expect the local planning authority to exercise its planning judgement, on the basis of the absence of the scheme, taking into account those factors which would normally apply to consideration of planning applications eg. the character of the development in the surrounding area, any general policy of the development plan, and national planning policy along with other relevant considerations where the site raises more complex issues which it would be unreasonable to disregard. Only those forms of development which for some reason or other are inappropriate should be excluded. Local planning authorities will note from section 17(7) that their certificate can be at variance with the use shown by the development plan for the particular site.

9. Where there is no adopted development plan, regard should be had to the draft plan, the decisions given on other planning applications relating to neighbouring land (including land unaffected by the proposed acquisition), and the existing character of the surrounding area and development."

In this case the applicant seeks confirmation that the Council would have considered it acceptable to use the site for the extraction of sand and gravel, filling with inert waste and restoration to agriculture.

In arriving at the appropriate alternative uses, the process must consider what uses would have been granted permission at the date of the serving of the Compulsory Purchase Order. The assessment is based on planning policy in place at relevant date, consideration of permissions granted prior to the relevant date and information available at that date. Taking all these factors into account it is considered that the use of the site for the extraction of sand and gravel, filling with inert waste and restoration to agriculture would have been acceptable. As such, approval of the certificate is recommended.

2. RECOMMENDATION

That the Committee resolve to issue a positive Certificate of Alternative Appropriate Development, and note that had a planning permission been granted for the proposal in 1996 the following planning obligation and conditions would have been imposed:

Planning Obligations

A. That the developer enters into an agreement with the applicant under Section 106 of the Town and Country Planning Act 1990 (as amended) and/or Section 278 of the Highways Act 1980 (as amended) and/ or other appropriate legislation to secure:

- (i) The provision of any off site highway works necessary to create the accessway into the site.

Planning Conditions

B. That if the application is approved, the following conditions be imposed:

1. Time Limit

The development hereby permitted shall be commenced within one year of the date of this permission.

REASON

To comply with the application as submitted.

2. Accord with plans

The development hereby permitted shall be carried out in full accordance with the submitted documents and plans (including the access design plan) except where expressly varied by the terms of this permission.

REASON

For the sake of clarity

3. 14 Bedford Court

No development shall commence until a 75m buffer zone has been created around no. 14 Bedford Court, should that property continue to be occupied. The details of the buffer zone shall be submitted to and approved in writing by the Mineral Planning Authority.

There after the development, including the buffer zone, shall be implemented in accordance with the approved details.

REASON

To accord with the application and in the interests of amenity.

4. Noise and hours of work 1

No plant or machinery, other than water pumps necessary for the approved disposal of water shall be operated, nor shall any work be undertaken in connection with the stripping of soil, extraction of minerals, despatch or movement of plant, transporting materials, maintenance of plant, or subsequent restoration except between the following times:

0800 and 1800 Mondays to Fridays

0800 and 1600 Saturdays

and no such operations shall be carried out on Sundays and Bank Holidays.

REASON

In the interests of amenity.

5. Noise and hours of work 2

Subject to the prior agreement of the Mineral Planning Authority, works may be carried out on Sundays between 0800 and 1600 for general maintenance of equipment which cannot reasonably be carried out during the hours detailed in Condition 5.

REASON

In the interests of amenity

6. Noise and hours of work 3

The following enabling activities may take place between 0700 and 1900 hours Monday to Friday, and between 0700 and 1600 hours Saturday:

- arrival and departure of workforce on site
- deliveries and unloading
- refuelling of plant and machinery
- site inspections and safety checks
- site clean up

REASON

In order to maximise the work that can be undertaken within the hours permitted under condition 5 and in the interests of amenity.

7. Timing for work with soil

The stripping, handling and replacement of topsoil and subsoil shall only take place in fine, dry weather and when the material is in a dry friable condition, with the minimum of working and compacting, in order to prevent the loss of soil structure.

REASON

To ensure the satisfactory restoration of the site.

8. Storage on site

A maximum of 300,00m³ of sand, gravel and clay shall be permitted to be stored on the site at any time.

REASON

To accord with the application and in the interests of amenity.

9. Stockpiles 1

The only materials that may be stockpiled on the site are:

- topsoil and subsoil from the site
- sand and gravel extracted from the site and awaiting processing or transportation to the T5 development site, and
- sand, gravel and clay extracted from the T5 development site

REASON

To accord with the application.

10. Stockpiles 2

No topsoil or subsoil stockpile on site shall exceed a height of 3m and no other stockpile shall exceed a height of 17m.

REASON

To accord with the application and in the interests of amenity.

11. Archaeological work

No development shall take place until the applicant has secured the implementation of a programme of archaeological work, in accordance with a written scheme of investigation which has been submitted to and approved by the Mineral Planning Authority.

REASON

To protect any archaeological interest which may be present on the site.

12. Archaeological recording

No development shall take place within the application site until the developer has secured the implementation of a programme of archaeological recording of the standing historic buildings, in accordance with a written scheme of investigation which has been submitted to and approved by the Mineral Planning Authority.

REASON

To protect any archaeological interest which may be present on the site.

13. Noise 1

The development shall not be begun until a scheme, which specifies the provisions to be made for the control of noise emanating from the site at all times during the period of operations, has been submitted to and approved by the Mineral Planning Authority.

REASON

In the interests of amenity.

14. Noise 2

Permissible noise levels during the operation of the site at the facades of occupied dwellings are as follows:

Monday - Friday 0700 - 1900 & Saturday 0700 - 1600

Time period 1 hour, noise limit 55LAeq,T (Db)

REASON

In the interests of amenity.

15. Noise 3

The rating level of noise emitted from any generator or compressor determined using the guidance of BS4142:1997, 1m from the facade of the nearest noise sensitive premises, shall be at least 5dB(A) below the existing LA90, T noise level.

REASON

In the interests of amenity.

16. Noise 4

A noise monitoring regime shall be agreed with the MPA before development commences. Once the programme of works has commenced on site, the applicant shall carry out noise monitoring in accordance with the approved regime, in order to determine the impact on nearby residents, The results of such monitoring shall be supplied to the MPA following any reasonable request.

REASON

In the interests of amenity.

17. Noise 5

Where the results of the noise monitoring indicate that construction noise levels exceed the levels referred to in Conditions 15 and/or 16, the applicant shall

- (i) notify the Council's Environmental Protection Unit as soon as reasonably practical;
- (ii) review the noise monitoring results in order to identify the activities/plant responsible for the exceedences
- (iii) take measures to prevent recurrence of the exceedences.

REASON

In the interests of amenity.

18. Dust

Prior to the commencement of development a scheme for controlling and minimising dust emissions from operations at the site, and for auditing the operation of the measures proposed, shall be submitted for the written approval of the Mineral Planning Authority. Thereafter the development shall be carried out in accordance with the details as approved.

REASON

In the interests of amenity.

19. Smoke

All plant used on the site shall be regularly maintained to ensure that emissions of smoke are minimised. No plant shall be operated on the site that emits black smoke.

REASON

In the interests of amenity.

20. Fires

No bonfires shall be lit on the site.

REASON

In the interests of amenity.

21. Landscape and Planting Management Plan

Within 3 months of the commencement of development, a Landscape and Planting Management Plan shall be submitted for the approval of the Mineral Planning Authority. This Plan shall include (but not necessarily be limited to)

- details of proposed tree survey
- a method statement for works in proximity to trees a scheme for the treatment of individual trees within the groups identified in the Tree Survey
- a planting strategy for both trees and hedgerows, including details of the positions, species, density and initial sizes of all new trees, shrubs and hedgerows, together with the programme of implementation of the scheme
- a strategy for the management and maintenance of all existing trees, shrubs and hedgerows that are to be retained, and of all new planting proposed on the site. The strategy is to cover a minimum period of 25 years and detail typical operations and frequencies.

The approved scheme shall thereafter be implemented in accordance with a programme and phasing plan to be submitted to and agreed with the MPA prior to the commencement of development.

REASON

To ensure the satisfactory development of the site, as insufficient details have been provided with the application.

22. Restoration Proposals

Within 3 months of the commencement of development, detailed Restoration Proposals shall be submitted for the approval of the MPA. The scheme shall incorporate relevant details of the landscape and planting management plan. The Restoration Proposals shall include, but not necessarily be limited to,

- details of proposed depths of subsoil and topsoil, and of their replacement and cultivation

- existing and proposed levels across the site following restoration and the typical gradients
- treatment of all land including areas for grassland/pasture, cultivation, nature conservation, recreation and/or planting
- location and type of proposed fencing
- locations and surfacing of any rights of way proposed
- details of trees, shrubs and hedgerow planting proposed as part of site restoration, including a specification, plant schedule and numbers
- details of seed mixes for meadow areas not covered by condition 28
- further details of the landscape enhancements.

The approved scheme shall thereafter be implemented in accordance with a programme and phasing plan to be submitted to and agreed with the MPA prior to the commencement of development.

REASON

To ensure the satisfactory development of the site, as insufficient details have been provided with the application.

23. Aftercare 1

Within 1 year of the date of this permission, an Aftercare Scheme requiring that such steps as may be necessary to bring the land up to the standard for its intended after-use shall be submitted for the approval of the Mineral Planning Authority. The scheme shall, among other matters, including provision for cultivation, stocking and husbandry; seed mixes and seed bed preparation; the programmes of cultivation, fertilising, planting, seeding and weed control within each successive planting season following soil placement; an efficient drainage system as may be necessary to bring the restored land up to the required standard for agricultural after-use; the monitoring of surface water drainage; and remedial measures to be adopted in the event of any failures of any part of the aftercare scheme. The approved scheme shall be implemented in full to an agreed programme and phasing plan following completion of site restoration.

REASON

To ensure the satisfactory aftercare of the site.

24. Aftercare 2

The aftercare of the site shall be carried out for a period of five years following the completion of restoration operations or approval of the aftercare scheme, whichever is the later.

REASON

To ensure the satisfactory aftercare of the site.

25. Aftercare 3

Before 31 August in every year during the aftercare period, a report shall be submitted to the Mineral Planning Authority recording the operations carried out on the land during the previous 12 months and setting out the intended operations for the next 12 months. This report shall include a schedule of defects in establishment including plant material that has failed in the current growing season and needs to be replaced in the following autumn/winter.

REASON

To ensure the satisfactory aftercare of the site.

26. Aftercare 4

Every year during the aftercare period the developer shall arrange a site meeting to be held before 30 November to discuss the details of the annual aftercare programme and annual report prepared in accordance with condition 25. Those invited to the meeting shall include the Mineral Planning Authority, the owners of the land within the site, all occupiers of land within the site, and (if judged appropriate after discussion with the Mineral Planning Authority) representatives of the Council's agricultural advisers and/or DEFRA.

REASON

To ensure the satisfactory aftercare of the site.

27. Seeding and maintenance

Prior to commencement of development details of the seeding and maintenance of the temporary topsoil bund shall be submitted for approval of the Mineral Planning Authority.

REASON

Insufficient details have been provided with the application.

28. Notice

The Mineral Planning Authority shall be given not less than 7 days and not more than 21 days written notice of the date on which the development hereby permitted commences.

REASON

In order to retain effective planning control over the development.

29. Temporary flood defence bund

The development shall not commence until a scheme for the construction of a temporary flood defence bund, to prevent an increased risk of flooding to the south, is submitted to and approved in writing by the Minerals Planning Authority. The works shall proceed in accordance with the approved scheme, unless otherwise agreed in writing by the Minerals Planning Authority. Measures shall be implemented to protect the bund from harm during the development.

REASON

To prevent any increased risk of flooding during the development.

30. Walls

No sheetpiled protection walls should be installed on site until details of the walls have been submitted to and approved in writing by the Minerals Planning Authority, in consultation with the Environment Agency. The walls shall then be constructed and maintained in strict accordance with the approved details, unless otherwise approved in writing by the Minerals Planning Authority.

REASON

To ensure that the effect of dewatering on groundwater levels is minimised and to maintain the integrity of the buffer zone of natural ground.

31. Hydrological regime

No development shall commence until measures to protect the hydrological regime of the Holme Lodge Ditch have been submitted to and approved in writing by the Minerals Planning Authority, in consultation with the Environment Agency. Measures shall then be installed in accordance with the approved details, prior to any other works commencing on site, unless otherwise agreed in writing by the Minerals Planning Authority.

REASON

To protect the hydrological regime of the Holme Lodge Ditch.

32. Management ditch

A groundwater level management ditch shall be installed, in accordance with details to be submitted to and approved in writing by the Minerals Planning Authority. The ditch shall be maintained in accordance with the approved details throughout the development.

REASON

To prevent the increased risk of flooding on land during the development; to prevent the build-up of groundwater and to maintain groundwater levels.

33. Groundwater monitoring

No development approved by this permission shall be commenced until a monitoring scheme for groundwater has been submitted to and approved by the Minerals Planning Authority. The monitoring shall then proceed in strict accordance with the approved scheme.

REASON

To prevent pollution of the water environment.

34. Drainage

The construction of the surface water drainage system shall be carried out in accordance with details submitted to and approved in writing by the Minerals Planning Authority before the development commences.

REASON

To prevent pollution of the water environment.

35. Surface water source control

Surface water source control measures shall be carried out in accordance with details which shall have been submitted to and approved in writing by the Minerals Planning Authority, before development commences.

REASON

To prevent the increased risk of flooding and to improve water quality.

36. Method statement

A method statement for the construction of the stockpiles and the measures to be implemented to prevent runoff containing high suspended solid content entering the watercourses shall be submitted to and approved in writing by the Minerals Planning Authority, before the development commences. The development shall then proceed in strict accordance with the method statement.

REASON

To prevent pollution of the water environment.

37. Site investigation works

Before the development is commenced further site investigation works shall be carried out to assess the degree and nature of the contamination present, and to determine its potential for the pollution of the water environment. The method and extent of this site investigation shall be agreed with the Minerals Planning Authority, prior to commencement of the work. Details of appropriate measures to prevent pollution of groundwater and surface water, including provisions for monitoring, shall then be submitted to and approved in writing by the Minerals Planning Authority before development commences. The development shall then proceed in strict accordance with the measures approved.

REASON

To prevent pollution of the water environment.

38. Buffer zones

No development shall commence until a 20 metre buffer zone adjacent to the River Colne main river, and an 8 metre buffer zone adjacent to the Holme Lodge Ditch main river, and a 15 metre buffer zone around the British Pipeline Authority Oil Pipeline have been established. The buffer zone adjacent to the River Colne should be measured from the top of the bank of the watercourses on both sides. The zones should be demarcated by fences, with a wooden "kick-board", or similar protection, applied along the base of the fence for a height of >250mm. The fences and kick-boards shall remain in place throughout the development. The zones shall contain no structures or hard surfacing and there should be no storage of materials and no access available to plant, machinery or vehicles. The design of the fences shall be agreed in writing by the Minerals Planning Authority before they are erected.

REASON

To protect the nature conservation value of the watercourses.

39. Lighting

All artificial lighting shall be designed to be directional and shall not spill light onto any local watercourses.

REASON

To minimise any adverse impacts on the ecology of these watercourses.

40. Restoration works

Within one year of the grant of planning permission, a scheme for the restoration works shall be submitted to and approved in writing by the Minerals Planning Authority. The restoration scheme

shall be designed to:

1. Prevent an increased rate of surface water run-off.
2. Include the removal of unnecessary structures, above and below ground, that are no longer required.
3. Manage groundwater from the north of the site in a groundwater level management channel or by including alternative acceptable measures to deal with the impedance of groundwater flow.
4. Prevent a loss of floodplain storage capacity on a level for level basis.

5. Allow the development of ecologically valuable grassland habitat, typical of lowland river meadows.

REASON

To prevent an increase in flood risk or, the retention inappropriate structures; to manage groundwater flow and to enhance the ecological value of the site.

41. Landscape Management Plan 1

The Landscape Management Plan shall contain assurances that blocks of planting will be thinned over time in such a manner as to ensure a 3m spacing of shrubs and 6m spacing of trees.

REASON

To avoid endangering the safe operation of aircraft through the attraction of birds.

42. Landscape Management Plan 2

The Landscape Management Plan shall contain assurances that any flood water will be quickly drained from the site and not retained in any way that would lead to the creation of wet habitats.

REASON

To avoid endangering the safe operation of aircraft through the attraction of birds.

43. Nature conservation

Within 3 months of the commencement of development, a scheme for the protection of the nature conservation interest of the site including the remaining Sites of Metropolitan Interest within and adjacent to the application site during operations, including but not limited to the retention and safeguarding of the habitat of the Tree Sparrow and bats in the area adjacent to the River Colne, shall be submitted for the approval of the Mineral Planning Authority. The scheme shall include a programme for the works proposed. The approved scheme shall thereafter be implemented in accordance with the agreed programme.

REASON

To safeguard ecological/biodiversity interests within and adjacent to the site.

44. Aircraft Safeguarding

Planting as part of the restoration scheme shall avoid berry bearing species. Any bird boxes shall be of a design to ensure the apertures cannot be widened to provide access to bird species larger than sparrows.

The extraction of minerals from the site shall only be undertaken in a phased manner, to prevent ponding of water.

At no time shall any landforms, stockpiles or structures exceed 15m in height when measured from natural ground level.

REASON

To avoid endangering the safe operation of aircraft.

45. Inert Waste

All imported materials used for filling excavated areas must be inert

Before any filling of excavated areas is undertaken, imported materials shall be independently tested for chemical contamination to demonstrate materials are inert, and the results of this testing shall be submitted and approved in writing by the Local Mineral Authority. All soils used for restoration and/or landscaping purposes shall be clean and free of contamination.

REASON

To ensure that only inert material is used to fill excavated areas.

3. CONSIDERATIONS

3.1 Site and Locality

The Application relates to land known as Moorbridge Farm and Bedford Court Estate, located to the West of Heathrow Airport and bounded roughly by the Bath Road to the north, the A3044 to the east, the River Colne to the West and Spout Lane North to the South.

The Bedford Court estate, consisted of neglected pasture, agricultural buildings, light commercial industrial buildings and 13 dwellings. These were let on agricultural tenancies. Nos 1, 2, 4 and 14 Bedford Court were not in the ownership of Surrey.

The land to the north (Moorebridge farm) consisted of pasture.

To the east was the A3044, a classified distributor road. On the other side of the A3044 was the Western Perimeter Road of Heathrow airport and Perry Oaks sewage works. To the west was the River Colne, a main river beyond which was the M25 and landfilled gravel sites. To the north was the A4. To the south was Spout Lane North and Spout Arch, landfilled gravel works.

The land was of limited nature conservation value. The Holme Lodge Ditch, classified by the Environment Agency as a main river, crossed the land in a north-south direction. This was subject to a 20m Environment Agency consultation zone.

An Environment Agency flood bund/ditch ran from north to south to the west of Bedford Court.

Most of the land (including the land taken) was in the flood plain of the River Colne.

A British Pipeline Authority oil pipeline crossed the eastern side of land in a broadly north-south direction.

The applicant has advised that the land contained workable deposits of sand and gravel, namely course to fine, rounded to sub-angular flint, quartz and quartzite gravel with subordinate amounts of sandstone and occasional limestone pebble. The gravel was intimately mixed with a medium to coarse clean flint and quartz sand. The recorded thickness of the sand and gravel were approximately 2 metres to 5 metres. The tonnages in the land taken were 320,000).

Access to the land was from (i) Bedford Court/Spout Road North; (ii) an unmade track from the A4 and (iii) a vehicle crossover for light agricultural use on the A3044, near its junction with the A4.

The land is designated as Green Belt and is subject to a height restriction of 15m.

3.2 Proposed Scheme

This is an application for a Certificate of Appropriate Alternative Development. The certificate seeks confirmation that at the 9th May 1996 planning permission would have been granted for development on the application site, comprising some 26 hectares, for:

- Construction of access from A3044
- Soil stripping; storage of soil in bunds around edge of extraction area
- Phased extraction of about 1.2 million tonnes of sand and gravel over a period of about 8 years, working from the north
- On-site processing
- Importation of inert fill
- Restoration to agricultural use with hedge and tree planting
- Retention of access for agricultural purposes

4. PLANNING POLICIES AND STANDARDS

The following policy documents are relevant to the consideration of this application:

National:

MPG 1: General and Development Planning
MPG2: Applications, Permissions and Conditions
MPG6: Guidelines for Aggregates Provision in England
MPG11: The Control of Noise at Surface Mineral Workings
PPG2: Green Belts
PPG9: Nature Conservation

Regional:

RPG3: Strategic Guidance for London Planning Authorities
RPG9: Regional Planning Guidance for the South East(March 1994)

Local:

- The Hillingdon Heathrow A4-M4 Local Plan 1985
- Borough Planning Strategy 1989, and 1990 amendments
- Deposit Draft Hillingdon UDP 1993

5. ADVERTISEMENT AND SITE NOTICE

Advertisement Expiry Date: Not applicable

Site Notice Expiry Date: Not applicable

6. CONSULTATIONS

6.1 External Consultees

Representation from the acquiring authority (The Highways Agency) have been received which sets out the context within which the application is made, a description of the site and surrounding area, guidance on the determination of s17 certificates, a description of the site including existing features and properties and the constraints relating to it such as the River Colne on the western boundary, the SINC's and the Longford-Walton oil pipeline along the eastern boundary of the site. It then goes on to set out the policies and guidance at national

and local level, applicable to the determination of the application. It then sets out the grounds and arguments as to why permission would not have been granted at the relevant date. The full representation is attached as Appendix A to this report, however its grounds of representation are set out as follows:

"6 Representations by the Acquiring Authority

6.1 The Acquiring Authority makes reference to the current national guidance on mineral working in MPG's and the development plan policy context for this s17 application as referred to above as they applied on 9th May, 1996. The acquiring authority represents that had a planning application been made for sand and gravel extraction on the Claimant's land and determined on the 9th May, 1996, then planning permission would have been refused. It follows that the positive s17 certificate sought by the Claimant's cannot be issued by LBH as mineral planning authority because:

- i. The application is predicated upon an incomplete review of the policies of the adopted development plan for the site applying on 9th May, 1996, and as such is fundamentally flawed;
- ii. Applying s54A of the 1990 Act, a planning application for sand and gravel extraction from the site as at the 9th May, 1996, would have been contrary to policies of restraint on such development and environmental protection policies in the adopted and emerging development plan for the site, with no material considerations indicating otherwise, and as such would have been refused;
- iii. The application is not accompanied by the detailed level of information advised in MPG's 2 and 6, and as required by adopted and emerging development plan policy, demonstrating the existence of the claimed quantities of workable sand and gravel reserves (1.2 million tonnes) are, as a matter of fact, contained within the application site;
- iv. Absent the requisite Environmental Assessment or equivalent planning assessment to accompany this application, the mineral planning authority have no basis for determining that adverse environmental impacts of the proposed development could have been dealt with in a satisfactory way such that the development could have proceeded;
- v. The application site on 9th May, 1996, included a residential property in third party ownership but the application itself makes no provision for safeguarding the residential amenity of the residents and their access to that property or ensuring that they and the property would not have been put at increased risk of flooding as a result of the development;
- vi. The application makes no reference to assessing then safeguarding, as appropriate, the residential amenities of any other residential property in the vicinity of the application site on 9th May, 1996, such that adverse impacts of the development on the residents of those properties would have been avoided;
- vii. The application contains insufficient information to demonstrate that in May 1996, in the no-scheme world, sufficient and suitable restoration material would have been available to restore the site in-step with the rate of extraction proposed, thereby avoiding unacceptable risks of bird strike to aircraft using the adjoining Heathrow Airport site;
- viii. The application contains no evaluation of the quality of the agricultural land in the site in May 1996 or whether restoration to a similar agricultural grading might be achieved and, as such, any grant of planning permission would have been contrary to development plan policies protecting Grades 1, 2 and 3a land from mineral working;
- ix. The application contains no evaluation of the natural habitats that would have been found within the site in May 1996 in the no-scheme world or whether the nature conservation interest of the site as a whole could be safeguarded, including by mitigation of impacts or translocation of habitats, and as such the proposals would have been contrary to development plan policies for safeguarding nature conservation interests;
- x. The application contains no information to demonstrate that the development could have occurred without adverse consequences for the hydrological and hydrogeological regimes

on and around the site in May 1996, including mobilising possible contaminants in the land, contrary to development plan policy;

xi. In the absence of certainty about the availability of restoration material in May 1996, and given the location of the site in the Colne Valley Park and the proximity of derelict and degraded land, there is no assurance that satisfactory and timely restoration and landscaping of the site would occur such that adverse visual and landscape impacts would not arise contrary to development plan policy, and particularly policy for safeguarding the Metropolitan Green Belt; and

xii. Absent information contained in the application relating to the quantity and quality of the sand and gravel deposits within the site, or that it would have made a significant contribution to meeting the local need for concreting aggregates for the construction industry, there is no basis for offsetting the above development plan and other policy objections in May 1996."

Planning Officer Comment

Concerns are raised that inadequate information has been provided as part of the application. In practice, had a real planning application have been submitted for assessment in 1996, it would have necessarily been accompanied by an Environmental Assessment. Environmental Assessment contains significant analysis and details, and obviously one does not exist from 1996. Officers have taken a pragmatic approach, and to make best use of the information and evidence that is available.

It is worth noting that in 2003 an Environmental Statement was produced an accompanied the approved application for mineral extraction at the application site. Whilst this obviously post dates 1996, and therefore can not provide actual evidence of ground conditions in 1996, there were not any material changes at the site between 1996 and 2003 (nothing, which would make the 2003 Environmental Statement irrelevant).

Officers have done their very best to find information (including from the 2003 Environmental Statement) to inform this assessment, and consider that the approach has been consistent with the Circular 06/2004 "Compulsory purchase and the Crichel Down Rules".

Concern is raised that insufficient proof is available to show that suitable restoration material would have been available to restore the site. There is no evidence to suggest that material could not be sourced, and subject to conditions to control the way extraction occurs (to make sure there is not ponding which would attracting birds), there would be no reason that planning permission would be refused. It is worth noting that consent was granted to mineral extraction at the site in 2003.

Other concerns raised are addressed in body of the report.

6.2 Internal Consultees

SUSTAINABILITY OFFICER:

Background

The following comments are in response to an application for a Certificate of Appropriate Alternative Development.

The processing of the application for this particular certificate requires consideration of a proposal for sand and gravel extraction as if applied for in 1996. The following comments are written as if made at that time.

Environmental Impact Assessment

The development is likely to require Environmental Impact Assessment by virtue of Schedule 2(c) of the Assessment of Environmental Effects Regulations (1988).

Ecology Observations

The principle guidance for considering nature conservation comes from Planning Policy Guidance Note 9: Nature Conservation. This document sets out a requirement to ensure development should consider nature conservation values.

Local planning authorities should not refuse permission if development can be subject to conditions that will prevent damaging impacts on wildlife habitats or important physical features, or if other material factors are sufficient to override nature conservation considerations.

Where there is a risk of damage to a designated site, the planning authority should consider the use of conditions or planning obligations in the interests of nature conservation. Conditions can be used, for example, to require areas to be fenced or bunded off to protect them, or to restrict operations or uses to specific times of year. Planning obligations can accompany permissions in order to secure long-term management, to provide funds for management, or to provide nature conservation features to compensate for any such features lost when development takes place. Full guidance on planning conditions is provided by DoE Circular 1/85 and on planning obligations in DoE Circular 16/91.

The Council does not consider that there are sufficient ecological reasons to refuse an application as the site itself and immediate surroundings are not overly sensitive. However, the proposed development is in close proximity to two locally designated sites, the Lower Colne Valley metropolitan site of importance for nature conservation (SINC) and the Perry Oaks Sewage Works Borough Grade 1 SINC. The citations for these SINCS and the relevant maps are included in the appendix.

The development will need to incorporate a vegetated buffer between the site and Lower Colne Valley SINC on the western side of the site boundary. The development should also be managed in such a way as to minimise any harm to the SINCS.

Of particular importance will be the need to restore the site to a land use that increases the habitat quality in the area.

A condition will be required to secure environmental improvements and specific wildlife habitat areas as part of the restoration plan.

An onsite management plan shall demonstrate no encroachment of harmful emissions such as noise, odour, dust or pollutants into the SINCS.

Pollution Prevention

A condition will be required to ensure that there are adequate plans for pollution prevention including the discharge of foul waters and any waters from washdown of materials.

HIGHWAY OFFICER:

There were three existing accesses to the site :

1. Bedfont Court/Spout Road North
2. A track from the A4 and

3. A vehicle crossover on the A3044, Stanwell Moor Road, near its junction with Bath Road, Longford.

The existing accesses 1 and 2 for a variety of reasons, stated in the submission, were not considered suitable for upgrading into acceptable accesses to serve the development. The option submitted is for an access off the A3044.

LB Hillingdon are the highway authority for the A3044 Stanwell Moor Road which is a dual carriageway, with a speed limit of 50 mph along the stretch of highway off which an access is proposed. The access as shown on the submitted plan provides adequate visibility and acceleration and deceleration lanes commensurate with the speed limit of the main road. The access and egress are of sufficient width to accommodate HGV and 16.6 m low loaders movements.

120 daily two traffic HGV movements are envisaged. This is a worst case scenario based on an assumption that empty lorries will come in to remove sand and gravel and lorries bringing inert fill to the site will leave empty. Based on a 10 hour working day, Monday to Friday (1/2 day Saturday) there would be 12 HGV two way trips during the AM peak hour. This level of trips is not considered to have any material impact on the surrounding Hillingdon highway network. As such no objections are raised on highway grounds.

7. MAIN PLANNING ISSUES

7.1 The Principle of the Development

A Section 17 application requires a look back to an historic date and set of circumstances but differ from planning applications because there is no intention that the alternative development will be carried out. What is required is a degree of clarity on land use and the acceptable form of development, together with the identification of any constraints or requirements that could impact on value, but there is no need for the applicant and LPA to resolve all the details of the development envisaged.

A more pragmatic approach, as to whether permission would have been granted at the relevant valuation date, is therefore appropriate which requires officers to exercise their judgement based not just on a re-reading of the policies and guidance that were extant at the valuation date but also on their or their colleagues experience of how these policies were in practice being applied at that date. This is particularly important when considering four issues in this case:

1. Whether the grant of permission would have been contrary to policies of restraint on such development in the adopted and emerging development plan for the site;
2. Whether there is sufficient level of information demonstrating the existence of the quantities of workable sand and gravel reserves (1.2 million tonnes) are contained within the application site;
3. Whether sufficient and suitable restoration material would have been available to restore the site in-step with the rate of extraction proposed.
4. Whether the loss of existing housing would have been acceptable.

Taking each of these issues in turn:

1. Policy

National Policies

National policy on minerals was contained in MPG1 (1988), this required Unitary Development Plans (UDP's) to recognise that local, regional and national requirements for minerals should be met and that each authority should make a contribution to this (paragraph 25).

Authorities were required to provide a land bank to allow for at least 10 years of extraction of aggregates (paragraph 56).

MPG6 (1994) (sand and gravel) stated that Mineral Planning Authorities in the South East should provide for the production of 420 million tonnes of sand and gravel in the period 1992-2006 (paragraph A3.3) and should make provision for landbanks consistent with this level of production (paragraph 81).

It is quite clear that there was a national remit for pursuing mineral extraction.

Regional Policies

Regional policies relating to mineral extraction in 1996 were contained in Regional Planning Guidance (RPG's). RPG3 (May 1996) (London) required that provision should be made in London for the extraction of workable mineral reserves and anticipated an increase in demand. Boroughs were required to demonstrate that they had considered the need for minerals.

It is quite clear that there was a regional policy remit for pursuing mineral extraction.

Local Policies

The policy situation was in a state of flux at the relevant date in that part of the site had originally been within the administrative boundaries of Surrey County Council but had transferred in April 1994 to the London Borough of Hillingdon.

Thus, whilst there were policies within the Surrey Structure Plan and the Surrey Minerals Local Plan which may have been applicable to the site, the whole area was now within the boundaries of the London Borough of Hillingdon and thus it is not stretching a point to argue that the policies of the emerging Hillingdon Unitary Development Plan should take precedence.

Policy MIN1 of the Hillingdon Unitary Development Plan had evolved from the original, which restricted production of sand and gravel to not significantly more than 50% of the London expectation, to a restriction of no more than 150 hectares of land south of the M4 being subject to planning consent, as set out in Policy MIN3, by the relevant date and had increased to 165 hectares by the time of adoption.

The deposit draft UDP of 1994 quoted a figure of 147 hectares as having extant planning permission, however there are no figures available as to the exact area of land with extant permission at the relevant date. However, it is significant to note that soon after the relevant date, in December 1996, permission was granted for an additional 22.2 hectares on land south of Sipson Lane. This would appear to indicate that there was capacity within the 150 hectare ceiling at the relevant date or that the Mineral Planning Authority did not consider a breach of this figure to be significant. In any event, at the relevant date there would not appear to have been a reason in terms of Policies MIN 1 and MIN3 as to why permission should not have been granted in principle for the application site.

The portion of the site which had been in the ownership of Surrey Council had been identified as a Category 1 potential working site in the Surrey Mineral Local Plan, in relation to which there was a presumption in favour of mineral working (Policy 10).

Policy M2 of the Heathrow A4/M4 Local Plan provided that, proposals for the extraction of minerals would be assessed against various criteria. These were general environmental criteria, and subject to conditions, including conditions to ensure restoration no objection to the scheme in policy terms would be raised.

The 1989 Hillingdon Borough Strategy recognised that pressure on mineral bearing land would be likely to increase. It is important to recognize that where mineral extraction is refused planning permission, this has the effect of increasing pressure for supply at other sites, this is a consideration which should be taken into account in the assessment of mineral extraction applications.

There were not any policies prohibiting mineral extraction.

2. Quantities of sand and gravel

With regard to whether information was available as to the existence of sufficient quantities of sand and gravel, the emerging UDP identified that part of the site within Hillingdon's boundaries as a site containing reserves of sand and gravel and that part within Surrey's boundaries was identified by Surrey as a preferred site for mineral extraction.

Thus there does not seem much doubt that the site contained sufficient deposits at the relevant date. This was borne out by subsequent permissions granted on the site.

3. Sufficient and suitable restoration material

On the issue of whether sufficient and suitable restoration material was available at the relevant date, there is no information available either way on this matter. It should be noted that the sites being worked before and up to the relevant date had sufficient material available and that, in researching applications around the time of the relevant date and some time before, there does not appear to have been any applications refused on the basis that insufficient fill material was available.

Again this was borne out by subsequent permissions granted on the site. Subject to conditions to ensure the site would not attract birds (which might be a hazard to aircraft), there would be no objection to the proposal in terms of how long it might take to find suitable restoration material.

Loss of Housing

The proposal would result in the demolition dwellings (i.e. the loss of residential accommodation). Policies H1 and H2 of the Unitary Development Plan seek to safeguard existing housing. The supporting text to these policies sets out when an exception to policies H1 and H2 may be acceptable. The exemptions include where an existing dwelling or small isolated group of dwellings is located so close to an established use which causes nuisance or disturbance that a satisfactory residential environment cannot practically be achieved.

It is considered that this policy exception applies in this particular case. The small, isolated group of dwellings at Bedfont Court is located close to the ends of the two main runways of Heathrow Airport in a noise environment that is unsatisfactory for residential occupiers.

Whilst it is appropriate to assess the loss of existing housing as a negative planning factor, it is also necessary to weigh this against the positive factors, which would include job creation, supply of minerals for construction, and the long term benefit of creating an attractive agricultural environment once the works required by the 'after care' conditions have been implemented (landscaping etc).

In conclusion, on the principle of sand and gravel extraction of the level indicated within the application, the proposal would not appear to conflict with the emerging UDP and sufficient information as to the presence of significant levels of sand and gravel within the site was available for the Mineral Planning Authority to grant permission.

7.2 Density of the Proposed Development

Not applicable to this application.

7.3 Impact on Archaeology

It is possible that archaeological remains are present on the site and this would need to be evaluated. However, this can be covered by condition.

7.4 Airport Safeguarding

The site was subject to height restrictions due to the proximity of Heathrow airport. However this would not restrict the development of the site subject to conditions limiting heights of any development/storage on the site.

Given the proximity to Heathrow airport, it is important to ensure the site does not attract birds, and therefore conditions are recommended to ensure that the extraction is done in a way which would not create large pools of water (attractive to birds), or that restoration landscaping involves berry bearing species (which may also attract birds).

7.5 Impact on the Green Belt

At the national level policy relating to Green Belts was contained within PPG2 - Green Belts, which at Paragraph 3.11 stated:

"3.11 Minerals can be worked only where they are found. Their extraction is a temporary activity. Mineral extraction need not be inappropriate development: it need not conflict with the purposes of including land in Green Belts, provided that high environmental standards are maintained and that the site is well restored. Mineral and local planning authorities should include appropriate policies in their development plans. Mineral planning authorities should ensure that planning conditions for mineral working sites within Green Belts achieve suitable environmental standards and restoration."

The fundamental aim of Green Belt policy is and was to prevent urban sprawl by keeping land permanently open. The proposed development would involve a period of disturbance of the land including restoration of the site. Openness will be reduced as a result of the activities at the site. Thus, there would be a temporary impact on the openness of the Green Belt in the short term. In the longer term, subject to the satisfactory restoration of the site which would be the subject of conditions, there would not be a permanent impact such that permission could not have been granted. Thus, in terms of its impact on the Green Belt the proposal is considered acceptable.

At the local policy level, the Heathrow A4-M4 Local Plan contained a conventional Green Belt policy (GB1) and sought landscape improvements in the Green Belt when new uses

were proposed (policy GB3). The 1989 Borough Strategy repeated the Green Belt policy (BPS 80).

The relevant policies in the Draft Unitary Development Plan were Pt1.1 (maintain the Green Belt for uses which preserve openness), OL1 (keep the Green Belt free from inappropriate development) and OL2 (seek comprehensive landscaping improvements in the Green Belt where appropriate).

Subject to conditions to ensure proper restoration, the development would not have been inappropriate development in the Green Belt. It would have involved the removal of buildings, improving the openness of the Green Belt.

The temporary extraction, filling and restoration operations would not have materially conflicted with the openness of the Green Belt. The site would have been restored to agriculture, with no buildings, an appropriate Green Belt use. The restoration would have enhanced the landscape of the Green Belt, and this benefit is considered to weigh in favour of the proposal.

7.6 Impact on the Character and Appearance of the Area

The site is situated within the Colne Valley Park (CVP). The aims of the CVP, as set out in its 1995 Regional Strategy are:

- To maintain and enhance the landscape (including settlements) and waterscape of the Park in terms of their scenic and conservation value and their overall amenity
- To resist urbanisation of the CVP and to safeguard existing areas of countryside from inappropriate development
- To conserve the nature conservation resources of the Park through the protection and management of its diverse plant and animal species, habitats and geological features
- To provide accessible facilities and opportunities for countryside recreation which do not compromise the above.

The site is also located within a Comprehensive Rehabilitation Area (CRA), which imposes strict requirements on any proposals within this area, including the restoration and reclamation of land and landscape improvements.

As the principle of mineral extraction is acceptable on this site, the achievement of the aims outlined above would be dependent on the quality of the restoration of the site, which could be, and is in applications of this nature, controlled by condition.

It is worth recognising that whilst the site was not waste land in 1996, the restoration would have enhanced the landscaping and appearance, again this benefit is considered to weigh in favour of the proposal.

7.7 Impact on neighbours - Noise and Air Quality

There are residential properties within and around the application site. Those within, except No.14 Bedford Court, are proposed for demolition, as part of the proposal.

The amenities of No.14 and those outside, but reasonably close to the site, could be protected by the imposition of conditions relating to:

- * buffer around the residence
- * noise levels,
- * dust emissions,
- * hours of working etc.

Subject to these conditions the proposal would be considered acceptable. It is important to recognise that mineral extraction is a temporary activity; impacts would be temporary and can be controlled. On balance, it is not considered that refusal of the scheme could be justified on the basis of impacts on neighbours.

7.8 Traffic Impact, Car/cycle Parking, Pedestrian Safety

There were three existing accesses to the site at the relevant date:

1. Bedfont Court/Spout Road North;
2. A track from the A4; and
3. A vehicle crossover on the A3044, Stanwell Moor Road, near its junction with Bath Road, Longford.

The proposal is to use an access off the A3044. A planning obligation would be required to secure the provision of any off site highways works necessary to enable the creation of the access into the site.

LB Hillingdon are the highway authority for the A3044 Stanwell Moor Road which is a dual carriageway, with a speed limit of 50mph along the stretch of highway off which an access is proposed. The access as shown on the submitted plan provides adequate visibility and acceleration and deceleration lanes commensurate with the speed limit of the main road. The access and egress are of sufficient width to accommodate HGV and 16.6m low loaders movements.

120 daily two traffic HGV movements are envisaged. This is a worst case scenario based on an assumption that empty lorries will come in to remove sand and gravel and lorries bringing inert fill to the site will leave empty. Based on a 10 hour working day, Monday to Friday (1/2 day Saturday) there would be 12 HGV two way trips during the AM peak hour. This level of trips is not considered to have any material impact on the surrounding Hillingdon highway network. As such no objections are raised on highway grounds.

7.9 Urban Design, Access and Security

Urban design is not strictly relevant to the proposal as it doesn't relate to buildings, access to the site can be secured by way of planning obligation. It is not considered that the proposal would result in any unacceptable security issues.

7.10 Access for People with a Disability

Given the nature of the scheme, no objection is raised to the proposal in terms of disabled access.

7.11 Housing Mix, Affordable Housing and Special Needs Housing

Not applicable to this application. The issue of the loss of existing housing has been dealt with in section 7.01 of this report.

7.12 Trees, Landscaping and Ecology

The site is in close proximity to two locally designated sites, the Lower Colne Valley metropolitan site of importance for nature conservation (SINC) and the Perry Oaks Sewage Works Borough Grade 1 SINC.

The principle guidance for considering nature conservation comes from Planning Policy Guidance Note 9: Nature Conservation. This document sets out a requirement to ensure development should consider nature conservation values.

Local planning authorities should not refuse permission if development can be subject to conditions that will prevent damaging impacts on wildlife habitats or important physical features, or if other material factors are sufficient to override nature conservation considerations.

Where there is a risk of damage to a designated site, the planning authority should consider the use of conditions or planning obligations in the interests of nature conservation. Conditions can be used, for example, to require areas to be fenced or bunded off to protect them, or to restrict operations or uses to specific times of year. Planning obligations can accompany permissions in order to secure long-term management, to provide funds for management, or to provide nature conservation features to compensate for any such features lost when development takes place. Full guidance on planning conditions is provided by DoE Circular 1/85 and on planning obligations in DoE Circular 16/91.

The Council does not consider that there are sufficient ecological reasons to refuse an application as the site itself and immediate surroundings are not overly sensitive. However, the proposed development is in close proximity to two locally designated sites, the Lower Colne Valley metropolitan site of importance for nature conservation (SINC) and the Perry Oaks Sewage Works Borough Grade 1 SINC. This being the case, conditions relating to the provision of a vegetated buffer between the site and Lower Colne Valley SINC on the western side of the site boundary, the management of the site to ensure no encroachment of harmful emissions such as noise, odour, dust or pollutants into the SINC, the restoration of the site to secure environmental improvements and specific wildlife habitat areas and the submission of plans for pollution prevention including the discharge of foul waters and any waters from washdown of materials are recommended.

7.13 Sustainable Waste Management

The site is large enough to accommodate waste storage facilities for any litter generated by workers on the site. The infilling excavated areas with inert waste is integral to the application, and is considered to be a suitable a location to dispose of this sort of waste. No objection is raised.

7.14 Renewable Energy/Sustainability

Not strictly applicable to this application. Conditions are imposed to ensure that drainage is adequate, pollution does not occur and that the natural environment (ecology) is not unacceptably harmed.

7.15 Flooding Issues

On the matter of flooding and drainage, technical expertise rests with the predecessor of the Environment Agency, The National Rivers Authority. It is worth noting that the Environment Agency was formed on 1 April 1996 (i.e. it rather depends on what date consultation would

have been undertaken to know which name consultation letters would have been addressed to).

No flood risk assessment was undertaken in 1996, however in practice, had a real planning application have been submitted for assessment in 1996, it would have necessarily been accompanied by a Flood Risk Assessment. Officers have taken a pragmatic approach, and to make best use of the information and evidence that is available.

It is worth noting that in 2003 various materials were submitted as part of an application for mineral extraction at the application site. This post dates 1996, however there is no evidence to suggest that conditions in terms of flood risk were significantly different between 2003 and 1996. This experience of other applications suggest that this authority would not object to the scheme in terms of flooding, subject to a number of conditions, which are recommended.

7.16 Comments on Public Consultation

The issues raised are covered within the body of the report.

7.17 Planning Obligations

Planning obligations are normally entered into under Section 106 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991). There are exceptions to this, namely s.278 agreements under the Highways Act 1980, which relate solely to highway works.

In this case to ensure that access to the site is provided a planning obligation would be sought to ensure any offsite highways works necessary to create the access are undertaken.

7.18 Agricultural Land

A small part of the application site may include agricultural land classified as being of Grade 2, but in the main it is classified as being Grade 3a quality. The Draft UDP states that the Mineral Planning Authority would resist the loss of grade 1-3a land unless restoration and aftercare would 'enable the land to be restored, as far as it is practicable to do so, to a standard similar to its pre-working agricultural land quality.' The temporary loss of, in this case mainly grade 3a agricultural land, is not therefore unacceptable in principle. What is required and can be achieved by rigorous conditions is that aftercare schemes are sufficiently robust such that the land is restored to usable agricultural land.

8. OBSERVATIONS OF BOROUGH SOLICITOR

An application for a certificate under section 17 Land Compensation Act 1961 ('S.17') is a mechanism that enables an applicant to find out whether planning permission could reasonably have been expected to have been granted at a specified date in the past, had a compulsory purchase order not been made in respect of that land. A S.17 Certificate may be used by an applicant in proceedings before the Upper Tribunal where the value of compulsorily purchased land is in dispute between the acquiring authority and the former owner of the land.

Although Section 17 has been amended by the Localism Act 2011, the Compulsory Purchase Order to which this application relates predates that Act coming into force. Therefore the provisions of section 17 for the purposes of this application remain as in force before the Localism Act, and the legal comments are therefore predicated on this basis.

The Committee has two options in determining this application. It can resolve either that:

- (a) In the Council's opinion there is a class/classes of development which would have constituted appropriate alternative development in relation to the acquired land, but not for any other classes of development; or
- (b) In the Council's opinion there is no development which would have been appropriate alternative development in relation to the acquired land.

Where, in the opinion of Members, planning permission would have been granted as per (a) above, they must specify the class or classes of development that would have been appropriate. Additionally, under section 17(5), if planning permission for the alternative use would have been granted:

- subject to conditions that were necessary to make the use acceptable; or
- at a future time (for example where a policy in force on 9 May 1996 envisaged a strategic managed release of certain land designations that would be phased across the plan period); or
- subject to other requirements, for example requirement for entry into a planning obligation;

then the certificate must state those conditions, or that future time or those additional requirements and provide full reasons for forming that view.

If planning permission would not have been granted for an alternative use, the Council must issue a certificate stating that the only use that would have been appropriate would have been the use envisaged by the compulsory purchase order. In the context of this application, the land was compulsorily acquired in order to accommodate the M25 spur road which was necessary as part of the Terminal 5 development at Heathrow Airport. Appropriate alternative developments (if any) will be alternatives to that spur road development.

The following key points should be noted by members:

- The relevant date for assessing a S.17 application is the date on which notice of the compulsory purchase was first given to the previous owner. In this case such notice of compulsory purchase was given on 9 May 1996 and Members must apply planning policy as it was in force at that date.
- Members should not take into account any events or circumstances pertinent to the land that occurred after that date that would not have been known about and must therefore exclude subsequent events from their minds (for example changes in policy that occurred after 9 May 1996 but that were not emerging policies material to an application determined on 9 May 1996)
- In determining this application, Members must assume that the development scheme for which the land was proposed to be acquired (i.e. the scheme for the M25 Spur Road) was cancelled at the relevant date, rather than assuming the scheme was never conceived.
- Members should apply ordinary planning principles to the application in light of the circumstances existing at the relevant date.
- In deciding what descriptions or classes of development would have been appropriate, there is no requirement to refer to a use class defined within the Town and Country Planning (Use Classes) Order 1995: alternative classes of use set out in a S.17 Certificate may be very general classifications of use, for example residential, industrial etc.
- The likelihood of an actual planning application being made or particular use being implemented is not a material consideration for the purposes of a S.17 Certificate.

- As with all items before Committee, Members should not have regard to the identity of the applicant or any background facts to this application if known to them, solely applying planning considerations as required by S.17.

If the S.17 Certificate is not granted on the terms of the application, the Council must include in the certificate a statement giving the Council's reasons and in any event give particulars of the manner in which an appeal can be made of the decision. Any party with an interest in the Land will have a right to appeal to the Upper Tribunal (Lands Chamber) against the S.17 certificate.

9. CONCLUSION

In arriving at the appropriate alternative uses, the process must consider what uses would have been granted permission at the date of the serving of the Compulsory Purchase Order. The assessment is based on planning policy in place at relevant date, consideration of permissions granted prior to the relevant date and information available at that date. Taking all these factors into account it is considered that the use of the site for the extraction of sand and gravel, filling with inert waste and restoration to agriculture would have been acceptable subject to conditions. As such, approval of the certificate is recommended.

10. REFERENCE DOCUMENTS:

PPG2 (1995)
 PPG9: Nature Conservation (1994)
 MPG1(1988)
 MPG6(1994)
 MPG11(April 1993) (noise)
 RPG3 (May 1996) (London)
 RPG9 (March 1994) (the South East)
 The Hillingdon Heathrow A4-M4 Local Plan 1985
 Borough Planning Strategy 1989 and 1990 amendments
 Hillingdon UDP Deposit Draft 1993

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