



Department for Levelling Up,  
Housing & Communities

Stephen Bell  
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Our ref: APP/P4415/W/19/3220577  
Your ref: RB2018/0918

7 June 2022

By email: [stephen.bell@turley.co.uk](mailto:stephen.bell@turley.co.uk)

Dear Mr Bell

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
THE CONSTRUCTION OF A WELL SITE AND CREATION OF A NEW ACCESS TRACK,  
MOBILISATION OF DRILLING, ANCILLARY EQUIPMENT AND CONTRACTOR  
WELFARE FACILITIES TO DRILL AND PRESSURE TRANSIENT TEST A VERTICAL  
HYDROCARBON EXPLORATORY CORE WELL AND MOBILISATION OF WORKOVER  
RIG, LISTENING WELL OPERATIONS, AND RETENTION OF THE SITE AND  
WELLHEAD ASSEMBLY GEAR FOR A TEMPORARY PERIOD OF 5 YEARS MADE BY  
INEOS UPSTREAM LTD  
LAND AT LAND ADJACENT TO DINNINGTON ROAD, WOODSETTS, ROTHERHAM  
APPLICATION REF: RB2018/0918**

*This decision was made by the Minister of State for Housing, Stuart Andrew MP, on behalf of the Secretary of State*

1. I am directed by the Secretary of State to say that consideration has been given to the report of Katie Peerless Dip Arch RIBA, who held a public local inquiry starting on 11 June 2019 into your client's appeal against the decision of Rotherham Metropolitan Borough Council to refuse your client's application for planning permission for the construction of a well site and creation of a new access track, mobilisation of drilling, ancillary equipment and contractor welfare facilities to drill and pressure transient test a vertical hydrocarbon exploratory core well and mobilisation of workover rig, listening well operations, and retention of the site and wellhead assembly gear for a temporary period of 5 years, in accordance with application ref:RB2018/0918, dated 13 June 2018.
2. On 27 June 2019, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

## **Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be allowed and planning permission be granted subject to conditions.
4. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendation. He has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

## **Procedural matters**

5. During the Inquiry, further details were submitted of an acoustic barrier in order to address noise levels to protect the amenity of affected residents. The parties agreed that planning permission was required for the barrier but views differ on whether, or how this could be achieved through the appeal process. This was considered in detail by all parties at the Inquiry and as part of the Inspector's assessment. The Secretary of State does not consider that this raises any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced.
6. An application for a full award of costs was made by INEOS Upstream Ltd against Rotherham Metropolitan Borough Council. This application is the subject of a separate decision letter.

## **Matters arising since the close of the inquiry**

7. While there have been developments in Government policy since the close of inquiry, in particular on net zero, this decision is based on material that was relied on before the Inspector, including the Committee for Climate Change's 2016 Net Zero report. The Secretary of State does not consider the development of Government policy materially affects the decision in this case, or that it is necessary to refer back to parties on this matter.
8. A list of representations which have been received since the inquiry is at Annex A. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.
9. Revisions to the National Planning Policy Framework were issued in July 2021, and references to paragraph numbers are to this revised version. The revisions do not affect the parts of the Framework relevant to this appeal.

## **Policy and statutory considerations**

10. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
11. In this case the development plan consists of the Site and Policies Document (adopted June 2018) and the Rotherham Core Strategy 2013-2028 (adopted September 2014).

The Secretary of State considers that relevant development plan policies include those set out in the Statements of Common Ground referred to at IR6.

12. Other material considerations include the National Planning Policy Framework (the “Framework”) and National Planning Policy Guidance (PPG), the national guidance documents in the Statements of Common Ground referred to at IR6, and various Written Ministerial Statements (WMS); the November 2019 BEIS WMS (IR8), May 2018 BEIS WMS, May 2019 MHCLG WMS and September 2015 DECC WMS.

## **Main issues**

### *Noise impacts*

13. For the reasons given in IR483-535, IR587 and IR591-4, the Secretary of State agrees that the proposal would give rise to noise and disturbance to local residents through the construction, decommissioning and drilling periods, although the actual duration of the works would be fairly short (IR587). He agrees with the Inspector’s conclusions on the noise limits which should be applied, as set out in condition 27, and further agrees that a 3m high acoustic barrier should be provided for Stages 1 and 2 and possibly Stage 5 (IR498, IR509). With this condition in place, and with the 3m high acoustic barrier, he agrees with the Inspector that in noise terms the scheme would be acceptable and would meet the requirements of Local Plan policy SP52 (IR587). The Secretary of State further agrees that the 3m high acoustic barrier needs planning permission, and that permission for it could be granted through this appeal by way of an amendment to the description of the development, without prejudice to any of the interested parties (IR587). For the reasons given at IR518, he agrees that the erection of the fence would create a sense of enclosure in the gardens of Berne Square; and further considers this harm to the amenity of affected residents carries limited weight against the proposal.

### *Green Belt*

14. The Secretary of State considers that the works proposed, with the exception of the acoustic fence, are not inappropriate development in the Green Belt as they fall under the exceptions relating to mineral extraction in paragraph 150 of the Framework. For the reasons given at IR504-512, he agrees with the Inspector that whilst the acoustic fence would be inappropriate development which is inherently harmful in the Green Belt, the loss of openness would be limited and the harm caused would subsequently be slight (IR510). In line with paragraph 148 of the Framework, the Secretary of State attributes substantial weight to the harm from inappropriate development and other harm to the Green Belt. The Secretary of State has gone on to consider whether there are any material considerations in favour of the proposal that are sufficient to amount to the very special circumstances that would be needed to clearly outweigh the harm and justify the grant of planning permission (IR511).

### *Highway issues*

15. For the reasons given at IR536-551 and IR590, the Secretary of State agrees with the Inspector that given the limited duration of the construction period which is when the largest vehicles would be accessing the site, there is no significant data to demonstrate that the route would be unsafe or unacceptable (IR549). He further agrees that the increased number of heavy goods vehicles that would access the site during the development and decommissioning phases of the proposal would cause some harm to the amenities of the local residents (IR550) and could be disturbing to residents (IR551).

Having considered the IR evidence and conclusions of the Inspector in this regard the Secretary of State considers that this carries moderate weight against the proposal.

*Other matters*

16. While it was not a main issue at the inquiry, the Inspector treated policy support for the proposal as a principal reason for finding that very special circumstances exist (IR589). It is therefore appropriate to consider this matter separately. The Secretary of State also notes that the weight to be given to policy support in the WMSs was questioned by Sheffield Climate Alliance.
17. The Secretary of State notes that national shale gas policy is set out in a number of WMSs. Although the WMSs remain extant, he has taken into account that specific shale gas policy in the Framework was quashed in 2019 by the Talk Fracking<sup>1</sup> judgment, following which paragraph 209(a) of the 2019 version of the NPPF was withdrawn (IR7). The November 2019 BEIS WMS introduced a moratorium on the issuing of Hydraulic Fracturing Consents (HFCs) as a result of concerns about induced seismicity. While HFCs are not part of the planning system, the Secretary of State agrees with the Inspector that the 2019 BEIS WMS and resulting moratorium is a material consideration in this case (IR584). He notes that the WMS states that 'the shale gas industry should take the Government's position into account when considering new developments', and agrees with the Inspector that any immediate value of the development as an exploratory or 'listening' well would be significantly reduced unless and until the restrictions are lifted (IR585).
18. The Secretary of State has also considered Sheffield Climate Alliance's representations, in which they question whether the exploitation of shale gas is compatible with the 2050 commitment to reduce emissions by at least 80% (the commitment at the time of the inquiry), and whether there is a strategic need for this proposal (IR469-478). He has also considered the representations made by Dr Andy Tickell at IR462, which submits that the Talk Fracking judgement has established that proper consideration should be given to counter arguments against shale gas exploration and also refers to the UK Committee on Climate Change's 'Net Zero' report.
19. Taking the above matters into account, the Secretary of State agrees, on the basis of the evidence put forward in this case, that in this case government support for shale gas as set out in the WMSs should carry reduced weight. He has further taken into account the provisions of paragraphs 209 and 211 of the Framework, and overall he considers that national policy support for the benefits of shale gas exploration in this case carry moderate weight.
20. The Secretary of State notes that local plan Sites and Policies Policy SP50 Exploration and Appraisal of Hydrocarbons is a permissive policy, which is subject to adverse impacts being acceptable. This includes adverse impacts on the Green Belt, and in the light of his conclusions on Green Belt matters (paragraph 23 below), he does not consider that this criterion is met.
21. For the reasons given at IR552-553, the Secretary of State agrees with the Inspector that the objections raised regarding air pollution, well type and renewable energy do not add weight to the case against the proposal. He agrees that the construction of the well in this area of tranquil countryside will inevitably cause significant visual intrusion and will be

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<sup>1</sup> Claire Stephenson v Secretary of State for Housing and Communities and Local Government [2019] EWHC 519 (Admin)

clearly visible from many viewpoints, including the Public Right of Way (PROW) that runs close to the site, and that this carries moderate weight against the proposal (IR554).

### *Green Belt balancing exercise*

22. In favour of the scheme, the Secretary of State considers that in this case moderate weight attaches to the benefits from exploration for shale gas. Against the scheme, he considers that the limited loss of openness and harm to the Green Belt from the temporary acoustic fence carries substantial weight; traffic disturbance during the construction period carries moderate weight; the adverse visual impacts of the proposal carry moderate weight; and the harm to residential amenity arising from the acoustic fence carries limited weight.
23. The Secretary of State has considered whether the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. In doing so, he has taken into account the limited time during which construction traffic and the presence of the acoustic fence would cause harm. Overall, the Secretary of State considers that there are no very special circumstances in this case which clearly outweigh the harm to the Green Belt and any other harm, and therefore the Green Belt balancing exercise is not in favour of the scheme.
24. In reaching this conclusion, the Secretary of State has taken into account the Inspector's comments at IR589 that it would be perverse to refuse planning permission for the whole proposal, if otherwise found to be acceptable, only because the temporary fence was considered to be inappropriate development. However, the Secretary of State differs from the Inspector in the weight he assigns to policy support for the proposal, which he considers to carry moderate weight rather than the significant weight assigned by the Inspector at IR515. He further does not agree with the Inspector's assessment at IR589 that the harmful impacts of the development would be outweighed by the policy support. His overall assessment is set out in the planning balance at paragraphs 26-28 below.

### **Planning conditions**

25. The Secretary of State has given consideration to the Inspector's analysis at IR556-582, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework and agrees with the Inspector at IR563-564 that an additional condition limiting the times during which HGVs could use the route along Dinnington Road is not needed.

### **Planning balance and overall conclusion**

26. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policy SP2 Development in the Green Belt, and does not fully meet the criteria in SP50 Exploration and Appraisal of Hydrocarbons. He considers that it is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
27. In favour of the scheme, the Secretary of State considers that moderate weight attaches to national policy support for the benefits of shale gas exploration in this case. Against

the scheme, he considers that the limited loss of openness and harm to the Green Belt from the temporary acoustic fence carries substantial weight; traffic disturbance during the construction period carries moderate weight; the adverse visual impacts of the proposal carry moderate weight; and the harm to residential amenity arising from the acoustic fence carries limited weight. The Secretary of State has carried out the Green Belt balance at paragraph 23 above, and has concluded that there are no very special circumstances which clearly outweigh the harm to the Green Belt and any other harm.

28. Overall he considers that the material considerations in this case indicate a decision in line with the development plan – i.e. a refusal of permission. The Secretary of State therefore concludes that the appeal should be dismissed and planning permission should be refused.

### **Formal decision**

29. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your appeal and refuses planning permission for the construction of a well site and creation of a new access track, a temporary 3m high acoustic barrier along it, mobilisation of drilling, ancillary equipment and contractor welfare facilities to drill and pressure transient test a vertical hydrocarbon exploratory core well and mobilisation of workover rig, listening well operations, and retention of the site and wellhead assembly gear for a temporary period of 5 years on land adjacent to Dinnington Road, Woodsetts, Rotherham, dated 13 June 2018, as amended as per paragraph 13 above.

### **Right to challenge the decision**

30. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

31. A copy of this letter has been sent to Rotherham Metropolitan Borough Council and Woodsetts Against Fracking, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*M A Hale*

Decision officer

*This decision was made by the Minister of State for Housing, Stuart Andrew MP, on behalf of the Secretary of State, and signed on his behalf*

### **ANNEX A - SCHEDULE OF REPRESENTATIONS**

#### **General representations**

<b>Party</b>	<b>Date</b>
Alexander Stafford MP	22 September 2022
Alexander Stafford MP	30 September 2022
Alexander Stafford MP	17 March 2022



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# Report to the Secretary of State for Housing, Communities and Local Government

by **Katie Peerless Dip Arch RIBA**

an Inspector appointed by the Secretary of State

Date: 6 January 2020

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TOWN AND COUNTRY PLANNING ACT 1990 - SECTION 78

APPEAL BY INEOS LTD

ROTHERHAM METROPOLITAN BOROUGH COUNCIL

THE CONSTRUCTION OF A WELL SITE AND CREATION OF A NEW ACCESS TRACK, MOBILISATION OF DRILLING, ANCILLARY EQUIPMENT AND CONTRACTOR WELFARE FACILITIES TO DRILL AND PRESSURE TRANSIENT TEST A VERTICAL HYDROCARBON EXPLORATORY CORE WELL AND MOBILISATION OF WORKOVER RIG, LISTENING WELL OPERATIONS, AND RETENTION OF THE SITE AND WELLHEAD ASSEMBLY GEAR FOR A TEMPORARY PERIOD OF 5 YEARS

Inquiry Held on 11 - 14 & 18 - 20 June 2019

Land Adjacent to Dinnington Road, Woodsetts, Rotherham

File Ref: APP/P4415/W/19/3220577

## **GLOSSARY AND ABBREVIATIONS**

<b>BS</b>	<b>British Standard</b>
<b>CCC</b>	<b>Committee on Climate Change</b>
<b>CNG</b>	<b>Current Noise Guidance</b>
<b>CPRE</b>	<b>Campaign to Protect Rural England</b>
<b>dB</b>	<b>Decibel</b>
<b>DP</b>	<b>Development Plan</b>
<b>DMRB</b>	<b>Design Manual for Roads and Bridges</b>
<b>EA</b>	<b>Equality Act</b>
<b>EHO</b>	<b>Environmental Health Officer</b>
<b>ENG</b>	<b>WHO Environmental Noise Guidelines for the European Region (2018)</b>
<b>EqIA</b>	<b>Equality Impact Assessment</b>
<b>ER</b>	<b>Environmental Report</b>
<b>GCN</b>	<b>World Health Organisation Guidelines for Community Noise 1999</b>
<b>HGV</b>	<b>Heavy Goods Vehicle</b>
<b>IEA</b>	<b>Institute of Environmental Assessment</b>
<b>LOAEL</b>	<b>Lowest Observed Adverse Effect Level</b>
<b>LP</b>	<b>Local Plan</b>
<b>MfS</b>	<b>Manual for Streets</b>
<b>NMP</b>	<b>Noise Management Plan</b>
<b>NNG</b>	<b>World Health Organisation Night Noise Guidelines for Europe 2009</b>
<b>NOEL</b>	<b>No Adverse Effect Level</b>
<b>NPPF</b>	<b>National Planning Policy Framework (the Framework)</b>
<b>NPSE</b>	<b>National Policy Statement on Noise</b>
<b>PNR</b>	<b>Preston New Road</b>
<b>PPGM</b>	<b>Planning Policy Guidance on Minerals</b>
<b>PPGN</b>	<b>Planning Policy Guidance on Noise</b>
<b>PROW</b>	<b>Public Right of Way</b>
<b>PTT</b>	<b>Pressure Transient Test</b>
<b>RMBC</b>	<b>Rotherham Metropolitan Borough Council</b>
<b>SCA</b>	<b>Sheffield Climate Alliance</b>
<b>SOAEL</b>	<b>Significant Observed Adverse Effect Level</b>
<b>SoCG</b>	<b>Statement of Common Ground</b>
<b>SoCG(N)</b>	<b>Statement of Common Ground (Noise)</b>
<b>SoCG(WAF)</b>	<b>Statement of Common Ground (Woodsetts Against Fracking)</b>
<b>TMP</b>	<b>Traffic Management Plan</b>
<b>WAF</b>	<b>Woodsetts Against Fracking</b>
<b>WHO</b>	<b>World Health Organisation</b>
<b>WMS</b>	<b>Written Ministerial Statement</b>

**File Ref: APP/P4415/W/19/3220577**

**Land Adjacent to Dinnington Road, Woodsetts, Rotherham**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by INEOS Upstream Ltd. against the decision of Rotherham Metropolitan Borough Council.
- The application Ref RB2018/0918 dated 13 June 2018, was refused by notice dated 11 September 2019.
- The development proposed is the construction of a well site and creation of a new access track, mobilisation of drilling, ancillary equipment and contractor welfare facilities to drill and pressure transient test a vertical hydrocarbon exploratory core well and mobilisation of workover rig, listening well operations, and retention of the site and wellhead assembly gear for a temporary period of 5 years on land adjacent to Dinnington Road, Woodsetts, Rotherham.
- The appeal was recovered for decision by the Secretary of State by a direction made on 27 June 2019. The reason for the direction was that the appeal involves proposals for exploring and developing shale gas which amount to proposals for development of major importance having more than local significance.

**Summary of Recommendation:** It is recommended that the appeal be allowed and planning permission be granted subject to conditions.

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**PROCEDURAL MATTERS**

1. The Council originally considered that the proposed development would give rise to unacceptable highway safety issues but, following consultation with RMBC's Transportation Unit alongside advice received from other consultants and Counsel, it has revised its position in respect of that matter. It has therefore withdrawn this reason for refusal, although the issue is still raised by the Rule 6(6) party, WAF.
2. During the Inquiry, further details were submitted of an acoustic barrier that the Appellants have suggested could ensure that noise levels were kept at an acceptable level. The Appellants do not consider that such a barrier would necessarily be required and submit that this would depend on the noise levels deemed to be necessary to protect the amenity of the affected residents. It was however, agreed by the parties that a barrier of 3m high would need planning permission in this location although they differ in their views on whether, or how, this could be achieved through the appeal process.

**THE SITE AND SURROUNDINGS**

3. The site is part of an agricultural field adjacent to the village of Woodsetts, accessed from Dinnington Road by an existing farm track. The field lies to the west of the village, adjacent to a public bridleway and right of way (PROW) that connects to a network of other such paths and runs past ancient woodland in Dewidales Wood, to the south of the site.
4. The farm track and PROW run past a group of bungalows in Berne Square. Berne Square is a cul-de-sac off Dinnington Road comprised of 12 semi-detached bungalows, many of whose gardens predominantly face onto the public right of way to the west or onto the field to the south. The bedrooms and living rooms of all the residents on the westerly or southerly side of Berne Square face onto the public right of way or field respectively. These are Council properties occupied by residents who have a variety of health problems, both physical and mental. A

doctor's surgery, which serves Woodsetts and other villages in the wider area, is also located in Berne Square.

5. Dinnington Road/Worksop Road/Woodsetts Lane runs east to west and is the main route through the village connecting to the Gateford roundabout and the main A57 trunk road to the east and Dinnington and North Anston in the west.

## **PLANNING POLICY**

6. The planning policies and national guidance that are agreed to be relevant to this case are set out in Section 5 of the draft Statements of Common Ground on general matters between the Appellants and RMBC (SoCG(G)<sup>1</sup>) and WAF<sup>2</sup> (SoCG (WAF)).
7. It should however, be noted that paragraph 209(a) of the National Planning Policy Framework 2019 (NPPF) (the Framework) has now been withdrawn.

### ***Latest Written Ministerial Statement (WMS)***

8. A WMS<sup>3</sup> issued on 4 November 2019 confirms that the Government will take a presumption against issuing any further Hydraulic Fracturing Consents until compelling new evidence is provided which addresses the concerns around the prediction and management of induced seismicity. The Development Plan for the Borough has not changed and neither has the relevant guidance in the Framework or the relevance of the previous WMSs.
9. The well proposed in the appeal application is of a type that has been used for many years to search for natural gas from coal seams. It does not include any hydraulic fracturing activities, but it would include a Pressure Transient Test (PTT). This involves inserting small amounts of water into the unfractured formation at low pressure, through perforations in the steel casing of the well. The Appellants note<sup>4</sup> that no induced seismicity is known to have been recorded or attributed to this kind of exploration drilling and this is agreed in the SoCG(G).

## **THE PROPOSAL**

10. The proposal is for a well site to provide the facility to drill down into the substrate to explore the geology of the site, with a view to determining the presence or otherwise of shale gas. The application is for the retention of the well for a temporary period of 5 years and it is envisaged that the project would be in a number of stages which are set out in the description of the proposal submitted with the application<sup>5</sup>.
11. They are summarised as Stage 1: site development and establishment (approximately 3 months); Stage 2: drilling, coring, PTT and suspension (approximately 5 months); Stage 3: maintenance of the suspended well site (retained until restoration, up to the 5 year extent of the application); Stage 3a: possible workover of the suspended well (up to 1 month as required). Stage 4:

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<sup>1</sup> CD5.1

<sup>2</sup> CD5.2

<sup>3</sup> Energy Policy Update: Written statement - HCWS68

<sup>4</sup> Mr Goold PoE

<sup>5</sup> CD1.4

use of the well as a listening well (up to 5 weeks as required); Stage 5: abandonment (decommissioning) and restoration (approximately 2 months).

12. The site would utilise then extend an existing farm access which would be upgraded and widened to allow for 2-way traffic. The track would divide to maintain access to properties to the east before turning west to reach the proposed site of the well head.
13. The precise equipment on the site has not yet been decided – this would depend on noise abatement requirements and market availability of drill rigs etc. However, the Appellants have stated that they have already specified the quietest rig type that is reasonably available.<sup>6</sup>

### **Other Agreed Facts**

14. Following discussions between the noise consultants for the 3 main parties, the Appellants have provided further details of noise attenuation measures which would reduce decibel (dB) levels at the nearest receptors, the properties in Berne Square. The consultants have also agreed a Statement of Common Ground on Noise<sup>7</sup> (SOCG(N) which agrees the level which the proposed methods could achieve. One of the suggested measures is an acoustic barrier which would run alongside the access track for up to 270m with an opening to allow access to the private properties that would share the track for some of its length. Values for the possible noise levels achieved by various heights of this barrier are set out in the document and discussed in subsequent paragraphs.

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<sup>6</sup> ID 44

<sup>7</sup> ID 24

## THE CASE FOR THE APPELLANTS

**NB** *The Appellants' Closing Submissions, the full text of which can be found at ID 43 have been summarised in the following paragraphs. The full text includes summaries of the evidence of witnesses that did not appear at the Inquiry because there was no challenge to that evidence.*

### Noise issues

15. The main issues of concern raised by RMBC and WAF's noise experts were: use of inappropriate background noise levels; the potential impacts from the construction of the site access track during Stage 1; daytime noise from vehicles on the site access track during Stage 2 and from night-time operations during Stage 2.
16. The results from both the four-week long baseline survey in early 2019 and ERM's survey in 2017 indicate that the background noise levels used in the Environmental Report (ER) were representative of conditions at the nearest dwellings in Berne Square.
17. The construction of the site access road is relatively short in duration. The additional noise predictions in the Technical Appendix confirm that the site access track can be constructed in accordance with best practice to prevent or minimise loss of amenity and will comply with the advisory upper noise limit set out in Annex E of BS 5228 - 1+ :2009+A1:2014. The noise impacts from Stage 1 operations can be controlled by appropriate planning conditions and enforced by a Noise Management Plan (NMP).
18. The additional noise predictions in the Technical Appendix demonstrate that noise from vehicles on the site access track during Stage 2 operations will comply with the relevant criterion intended to protect residential amenity.
19. The Stage 2 drilling operations are relatively short-term in duration and the noise is most akin to noise from a construction site. In the UK such temporary operations are typically subject to less onerous requirements, which take account of their short-term nature and practical considerations.
20. The impacts from Stage 2 drilling operations at night are predicted to be below the threshold for significant effects based on the assessment framework suggested in BS 5228, the lowest observed adverse Lowest Observed Adverse Effect Level (LOAEL), and the latest World Health Organisation (WHO) noise guidance.
21. The noise predictions in the Environmental Report (ER) and supporting documents are based on worst case operational conditions and pessimistic assumptions. There are practical measures available to mitigate noise from the construction of the site access track and short-term drilling operations, which use well proven noise mitigation techniques.
22. The noise limits proposed in the ER respect the control philosophy proposed by the National Policy Statement on Noise (NPSE) and the noise limits recommended by the appropriate Planning Policy Guidance on Minerals (PPGM) and would be consistent with other recent planning appeal decisions for similar projects.

23. The noise levels from the installation would not cause significant adverse effects, subject to the satisfactory implementation of the mitigation measures outlined in the ER and usually contained within a Noise Management Plan (NMP), enforced by appropriate conditions. The operations will not significantly affect residential amenity during the daytime or evening.
24. It would be inappropriate to regulate the night-time noise impacts from the Stage 2 drilling operations using the  $L_{\text{night}}$  index, as this is intended to be used to assess exposure over a year. A night-time noise limit of 42 dB  $L_{\text{Aeq 1 hour}}$  should provide sufficient safeguards for public health. This is consistent with WHO Guidance and UK and European practice for short-term operations.
25. Bearing in mind that WHO advise that the threshold for protecting health from exposure to most types of environmental noise is 44-45 dB  $L_{\text{night}}$ , outside (averaged over a year), a night-time noise limit of 42 dB  $L_{\text{Aeq 1 hour}}$  for drilling operations would provide sufficient safeguards for public health, without imposing an unreasonable burden on the operator. In practice the proposed Stage 2 operations is predicted to be less than 40 dB  $L_{\text{night}}$  outside, the WHO's LOAEL which, subject to the limits of epidemiological evidence, provides protection for the general public and vulnerable groups. The frequency of worst case sound propagation conditions (downwind) means that the noise levels at the nearest receptors will be less than the worst case predicted levels for the majority of the time.
26. Subject to the satisfactory implementation of the mitigation measures to be outlined in the NMP, the predicted impacts from Stage 2 drilling will not give rise to a significant adverse effect (where the predicted night-time noise is <50 dB  $L_{\text{night}}$  outside, the assumed the Significant Observed Adverse Effect Level (SOAEL), will not give rise to an adverse effect (where the predicted night-time noise is <44-45  $L_{\text{night}}$  outside, the WHO's revised threshold for protecting human health) and less than WHO's previous LOAEL value and will enable a good standard of amenity to be achieved, where the predicted daytime and evening noise levels are well within the standards proposed by the PPGM.
27. The NMP will include provisions for further noise predictions post-planning to demonstrate that the construction of the site access track and other Stage 1 operations will comply with relevant planning conditions. I would expect the NMP to require further details and justification for rig selection and to demonstrate that Stage 2 operations will also comply with planning conditions, particularly for night-time. The NMP may also include requirements for routine continuous monitoring and the reporting of noise from operations. This provides a high level of confidence that the operations will be effectively controlled.
28. The planning officer's report to RMBC's Planning Board concluded with respect to noise that *'It is considered that noise levels would not be at such an adverse level that would justify a refusal. Subject to recommended conditions including a noise monitoring strategy and management plan, this is considered to safeguard future noise levels would be contained within acceptable parameters'*. The subsequent additional noise predictions for the construction of the site access track address the EHOs concerns. The proposed development meets all necessary noise criteria, will not cause sleep disturbance and will not cause significant loss of amenity.

## Limits

29. The relevant guidance in relation to noise limits is contained in the PPGM. This states: *'Mineral planning authorities should aim to establish a noise limit, through a planning condition, at the noise-sensitive property that does not exceed the background noise level (LA90,1h) by more than 10dB(A) during normal working hours (0700-1900). Where it will be difficult not to exceed the background level by more than 10dB(A) without imposing unreasonable burdens on the mineral operator, the limit set should be as near to that level as practicable. In any event, the total noise from the operations should not exceed 55dB(A) LAeq,1hr (free field). For operations during the evening (1900-2200) the noise limits should not exceed the background noise level (LA90, 1h) by more than 10dB(A) and should not exceed 55dB(A) LAeq,1hr (free field). For any operations during the period 22.00-07.00 noise limits should be set to reduce to a minimum any adverse impacts without imposing unreasonable burdens on the mineral operator. In any event the noise limit should not exceed 42dB(A) LAeq,1hr (free field) at a noise sensitive property.'*
30. In addition, PPGM permits higher noise limits for particularly noisy short-term activities. These are activities such as soil-stripping, the construction and removal of baffle mounds, soil storage mounds and spoil heaps, construction of new permanent landforms and aspects of site road construction and maintenance. It states that increased temporary daytime noise limits of up to 70dB(A) LAeq,1hr (free field) for periods of up to 8 weeks in a year at specified noise sensitive properties should be considered to facilitate essential site preparation and restoration work and construction of baffle mounds where it is clear that this will bring longer-term environmental benefits to the site or its environs.
31. The daytime limits and the night time limits are influenced by the concept of unreasonable burdens on the operator. The night time limit is not to be set or even considered relative to background levels. Instead the requirement is to reduce to a minimum any adverse effects without imposing unreasonable burdens on the operator.

### (i) Day time limits

32. The noise consultant for the Appellants confirmed that that readings taken over a 5 week period (4 plus 1) were all similar or identical and confirm that the background level (daytime) is 40dB LAeq.<sup>8</sup> The 4 week survey was undertaken jointly by Airshed, RMBC and those acting for WAF. Furthermore, the SoCG(N) confirms the daytime levels at 40dB. There is no scope for any other finding.
33. The consultant also confirmed in evidence the reasons why the Agility Acoustic measurements cannot be relied upon<sup>9</sup>. Daytime limits have been set at 55dB in other recent appeal decisions<sup>10</sup>.
34. Consideration must also be given to *'unreasonable burden'* and whether in light of all the evidence it is reasonable, proportionate and necessary (in terms of the guidance on conditions) to impose a condition limiting daytime noise to 50dB, 55dB or possibly in between. It is submitted that all the evidence supports a limit of 55dB.

<sup>8</sup> PoE para. 3.10

<sup>9</sup> PoE paras 3.4 – 3.6

<sup>10</sup> Preston New Road (PNR) [full decision lodged] - Bramley Moor Lane [CD7.10] - Common Road [CD7.8]

**(ii) Night time**

35. The main concern at night is to prevent sleep disturbance. Impacts should therefore be assessed against absolute health-based criteria rather than a criterion based on pre-existing background noise levels. The  $L_{\text{night}}$ , outside criterion used by WHO is based on the index adopted by the European Noise Directive. The  $L_{\text{night}}$ , outside is an annual exposure limit and calculation of exposure should take account of the duration of the project and the prevailing meteorological conditions. The  $L_{\text{night}}$  should therefore not be used to assess impacts from short-term operations, because it is an annual exposure level. Nevertheless, WHO Guidance is based on robust epidemiological evidence and is important when considering impacts on human health and wellbeing.
36. The advice published in 2009 from WHO was that the No Observed Effect Level (NOEL), for sleep disturbance was  $<30\text{dB } L_{\text{night}}$ , outside. That expert review proposed  $40\text{dB } L_{\text{night}}$  outside as the LOAEL for night noise for all sources. The experts concluded that a  $L_{\text{night}}$  value of  $40\text{dB}$  should be the target for all sources to protect the public, including the most vulnerable groups such as children, chronically ill and elderly people. The 2009 WHO Guidance also stated that the threshold for protecting well-being was  $42\text{dB } L_{\text{night}}$ , as an annual exposure level.
37. WHO updated its Guidance on health related effects of environmental noise most recently in 2018. This no longer proposes specific LOAEL values, which might complicate the application of NPSE, which was published shortly after the 2009 WHO Guidance framework. The change in approach to setting guidelines follows WHO's adoption of a formal guideline development process in 2014. WHO explain that the revisions to the recommended guidelines for night-time exposure in the 2018 Guidance are '*evidence based*' whereas the criteria set out in 2009 were based on '*expert judgements*'.
38. Neither the 2009 nor 2018 WHO Guidance provided specific criteria for surface minerals or other industries, due to the lack of sufficient epidemiological data. Noise from the proposed stage 2 drilling operations would be closest in character to noise from distant steady state road traffic. The 2018 WHO Guidance increased the threshold for road traffic and railway noise at night from  $40\text{dB } L_{\text{night}}$  outside to  $44\text{-}45\text{dB } L_{\text{night}}$  outside. The  $40\text{dB } L_{\text{night}}$  outside has only been retained for aircraft noise as aircraft have significantly more sleep disturbing/intrusive characteristics.
39. The 2018 Guidance sets out the differences between the Guidance and how this relates to, and overlaps with, the earlier Night Noise Guidance (NNG) from 2009. Furthermore, the current guidelines complement the NNG from 2009. The 2009 and 2018 WHO Guidance focus mainly on noise from transport as being the most ubiquitous source of environmental noise, for which good quality epidemiological data is available. Neither the 2009 nor the 2018 Guidance proposed specific criteria for construction, industrial or surface mineral activities noise. The 2018 Guidance states that: '*The current environmental noise guidelines (CNG) for the European Region supersede the CNG (from 1999. Nevertheless, the GDG recommends that all CNG indoor guideline values and any values not covered by the current guidelines (such as industrial noise and shopping areas) should remain valid*'.
40. The 1999 CNG recommended that noise in bedrooms should not exceed  $30\text{dB } L_{\text{Aeq } 8 \text{ hr}}$  at night (based on the assumption that the noise reduction from

outside to inside with the window open is 15db) and that noise outside bedrooms should not exceed 45dB LAeq 8 hr between 23:00 and 07:00. This criterion formed the basis of the 42dB LAeq 1 hour free field night-time limit (with a 3dB adjustment to allow for façade reflection) proposed by PPMG and continues to provide good protection for human health and amenity at night. The fact that the latest WHO Guidance now proposes a night-time standard of 45dB L<sub>night</sub> outside (formerly 40 dB L<sub>night</sub> outside) means that the night-time limit of 42dB LAeq 1 hour (free field) criterion in the current PPMG is quite conservative, at least for normal populations.

41. The ER predicts that the night-time noise attributable to Stage 2 drilling operations should not exceed 39dB LAeq 1 hr at the nearest noise sensitive receptor when averaged over an hour at any time between 22:00 – 07:00 over the three months of active drilling. The predicted noise levels from the drilling operations in the ER are based on the worst case rig and worst case downwind propagation. The long-term average noise from drilling would be lower than predicted at the nearest receptor once the pattern of local wind speed and wind direction is taken into account.
42. Bearing in mind that the WHO's current threshold for protecting health is 44-45dB L<sub>night</sub> outside where this is based on long-term, annual free-field exposure, a planning condition imposing a night-time criterion of 42dB LAeq 1 hr (where the 1 hour average is not to be exceeded at any time in the 3 months of night-time drilling) provides a good level of protection, taking account of the short-term nature of the proposed operations. Thus, although the L<sub>night</sub> outside should, strictly speaking, not be applied to the short-term night-time drilling, (because it is a long-term, annual average) the operations should in any event comply with the WHO health based criterion of 44-45dB L<sub>night</sub> outside as well as with the (now possibly anachronistic) 2009 WHO LOAEL of 40dB L<sub>night</sub> outside.
43. Therefore, the proposed limit of 42dB LAeq 1 hr would protect the health and well-being of all including the residents of Berne Square who have been fully considered as detailed above.
44. A condition must be reasonable, necessary, and proportionate. On this basis there is no justification for a night time condition of less than 42dB LAeq 1 hr hour and certainly not 37dB LAeq 1 hr. No reasoned justification was given for a limit of 37dB LAeq 1 hr and there is no evidence to suggest that that limit would be reasonable or necessary. If the limit meets the criteria of WHO guidance, then that must be the appropriate limit. There was no evidence to suggest that the WHO guidance would not be met.

### ***Unreasonable burden in relation to noise***

45. The issue is a simple one. PPGM requires limits to be set without imposing unreasonable burdens on the operator. It may be obvious in an exploratory situation where there will be no income and everything is at risk, that an additional expense of £1m, £2m or more would place an unreasonable burden on an operator.
46. Separately to force an operator not to drill at night when there will be safety and other practical consequences will also be unreasonable. This must be especially so when the limit proposed complies with WHO and PPGM and the development will only last for a few months.

47. The position is that although the rig itself may be 60 m or so high, the top drive (which is the engine or motor) moves up and down the height of the rig as drilling into the ground progresses. To be clear, the top drive which is the noise source on the rig moves from a height of 60 m or so down to the floor or deck of the rig. So as a matter of simple common sense a fence close to Berne Square will have some mitigating effects for the Berne Square properties. The precise extent of that cannot be known until the rig is finally selected. In the meantime, all calculations have been carried out on a worst case basis, as was made clear in evidence.
48. The reliance by RMBC and others on the Preston New Road (PNR) decision is flawed as it actually supports the Appellants. The relevant facts are:
  - (a) The operator proposed the mitigation. Accordingly, it is no surprise it was found not to be unreasonable.
  - (b) The income stream was potentially very significant.
  - (c) The time period at PNR was much, much longer.
49. The Appellants' corporate witness confirmed there will be no income from this exploration well and the likely drilling costs would be £8m. It is quite unreasonable to burden the proposal with additional expense of say £2m being about ¼ of the total costs to achieve a modest reduction for only three months.
50. In addition, the unchallenged evidence is that to enclose the works and rig would cost a significant amount. Evidence also discloses that no night time working would cost around £2m and reducing the top drive rotation would add £1m.
51. It was confirmed that no night working can introduce safety and operational risks. Accordingly, it cannot reasonably be suggested that there is no context against which to judge the unreasonable burden costs. The costs above can be considered in the context of an operational cost of £8m. On any view all of the above additional costs are unreasonable when viewed in context. They are most certainly unreasonable given the evidence that the internal noise, would be ~27 dB with windows open, or even less with windows closed. All parties agreed that the night-time noise level inside bedrooms in Berne Square would comply with WHO sleep disturbance criteria, even with windows open.
52. In all of the foregoing circumstances it is submitted that it is clear that any reduction below the limit proposed would not be reasonable. The Appellants have already specified the quietest rig (top drive) that is reasonably achievable.
53. In conclusion the Appellants submit that the limit proposed of 55dB daytime, 42dB night time are the appropriate levels. That is of course the same as imposed at Common Road and Bramleymoor, the recent decisions by Inspectors.
54. For the avoidance of any doubt it is confirmed that the cost around £100,000 of the full 270m noise barrier at 3m would not be an unreasonable cost in all the circumstances of this case, provided of course that the noise predictions justified it. This is a quite separate question as to whether a condition meets the relevant guidance.

## **Mitigation**

55. Evidence was given about the mitigation already included or embedded in the proposal. However, there is one further possible means of mitigation under consideration – namely the timber fence. Whether this is needed or not, and if so, to what extent will depend on the noise limits imposed in conditions. From a noise perspective a 3m fence is optimal and it is self-evident that the taller the fence the greater would be the mitigation. However before requiring any fence, all planning issues must be weighed in the balance and the relevant guidance on conditions followed.
56. Based on the SoCG(N) and the relevant guidance in the PPGM, for Stage 1, week 1, no fence would be required (agreed predicted level 69dB; limit 70dB). For Stage 1, weeks 2-4, no fence would be required (agreed level predicted 62dB; limit 62dB). For Stage 1, after week 4, no fence would be required (agreed level predicted 55dB; limit 55dB).
57. For stage 2 Daytime, in the event that a limit of 55dB is set then no fence would be required. In the event that a limit of 50dB is set, a fence of between 2m and 3m may be required. In the event that a limit of 51dB is set then a 2m fence may be required.
58. The agreed background plus 10dB is 50dB daytime<sup>11</sup>. There is no possible justification for setting a limit below background plus 10dB, namely 50dB during the day. Therefore, there is no evidential basis at this time to find that a 3m fence is required during the daytime. Only a limit of 48dB justifies a 3m barrier and this is less than background plus 10 which would be unreasonable.
59. For Stage 2 Night time, night time work involves no traffic, only the rig. Accordingly, the agreed predicted level is 39dB. It follows that if a limit is set at 39dB or above then no fence will be required or could be justified. For reasons stated elsewhere there is no justification for a limit of 37dB. Accordingly, no fence is required for night time working.
60. In summary on the possible mitigation by fence, there is no need for a fence in the initial stages. There may be no need for a fence in the later stages. Critically there is no evidential basis for a 3m fence at all. The length of any fence and the precise height of any fence can only be calculated when noise limits are set and then detailed calculations undertaken at the relevant time. The relevant time will include knowledge of the rig that has actually been selected. In these circumstances it is submitted that the appropriate way of progressing matters is to leave the precise details to be agreed by virtue of the NMP, after noise limits have been set.
61. Brief consideration may be given to the limit of 70dB in the PPGM for certain short term works (particularly noisy short term activities). The PPGM lists certain activities which are appropriate and the Appellants submit that the term 'longer-term environmental benefits' applies to baffle mounds. In any event, the initial works comprising the erection of a fence and the formation of the access track will themselves bring environmental benefits as a fence would mitigate noise and the macadam track would be quieter and less dusty than the existing track. This

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<sup>11</sup> ID 24

would bring environmental benefits to existing traffic (both commercial and domestic) in relation to noise as well as help to suppress dust. Accordingly, on either interpretation the 70dB limit is appropriate.

### ***Issues relating to any fence***

62. In addition to the noise mitigation there may be other considerations in respect of the fence. Any fence is a very minor issue against the overall size and scale of the proposed development. It is not possible to conclude any fence (even if required) would be a substantial change (per *Wheatcroft*). This is precisely the sort of issue that could have been left to the noise management plan.
63. The Appellant offered the following in respect of each of the further responses provided by RMBC:
- (a) PROW: The Appellants can confirm that the fence would not impede the PROW at any point. The line of the majority of the fence is shown on scale drawing P304-S21-PA-05 REV D. The Appellants note that the RMBC has queried the position of the existing gate as shown on the drawing. This minor matter can be managed through conditions.
- (b) Landscape: The officer's conclusions confirm that the visual effects of the fence are likely to be significant although limited, and that other factors need to be weighed in the balance, including acoustic benefits. It is noted that the opinion is based on part on the WAF 'montages' and that the Appellants did provide a sample panel.
- (c) Highways: As noted above, the Appellants have been made aware of the inaccurate position of the existing gate as shown on the submitted drawing. This will be rectified either during the Inquiry, or potentially through conditions.
64. Point 3 of the note addresses the forward visibility issues raised by Mrs Timons in her statements, and also during the site visit by the witnesses for the Appellants and WAF. The Appellants note that the current proposal would be to include a banksman at the gates, such that access to and from the site can be managed effectively without causing undue delay or inconvenience to other users of the track.
65. The Appellants propose that a banksman be provided at the site entrance and a further banksman at the gates along the access road. They will be in radio contact with site logistics at all times and will be able to manage movements along the site access roads to ensure safety and minimal inconvenience for all users of the shared element of the track.

### ***Green Belt Issues***

66. The Appellants accept that there is a visual component to assessing effects on openness but wish to make the point that this is not the sole factor – i.e. the fence does not necessarily harm openness simply because it can be seen more readily and more closely than other elements of the development.
67. The Appellants consider that, if the fence is necessary to mitigate noise issues, then it should be considered to be an inherent part of the development and thus considered under the *Europa* case, as has been accepted by the Council in this case and at Harthill, where no Green Belt concerns were raised.

68. The Planning Statement, submitted with the planning application for this Appeal noted: *'Based on the analysis undertaken in a suite of appeal and High Court decisions for Europa Oil & Gas at Holmwood, an exploratory core well is an inherent part of "minerals extraction" and therefore it is "appropriate development" in the Green Belt, provided that it preserves openness and it does not conflict with the purposes of including land in the Green Belt.*
69. *The extent to which an exploratory core well site can preserve the openness of the Green Belt and not conflict with the purposes of including land in the Green Belt will depend upon an assessment of: (a) The duration of the activity, (b) Whether the extent and nature of the proposed development is needed for that particular operation and (c) The extent to which the proposals are reversible.*
70. *In this case, the duration of activity will be short and entirely reversible. This application seeks temporary permission and includes restoration proposals. The extent of development as set out in the Proposal includes only equipment and areas which are truly necessary to carry out the operations described. The scale of the development is not over and above that which would normally be required for an operation of this nature. On this basis, we consider that the development is appropriate in the Green Belt and that it preserves openness.*
71. *UDP Policy requires that the extent to which the development conflicts with the purposes of including land within the Green Belt is considered. The site is in an area of Green Belt which is neither a strategically important gap between main settlements, nor is it suffering from historic erosion or risk of coalescence. There will be the temporary introduction of build development, but this is entirely reversible and temporary in nature.*
72. *There would be no enduring effect on the permanence or wider functioning of the Green Belt in this area. It is considered that there would be no harm to the purposes for including this land in the Green Belt, not least as it is clear that the development can be considered to be both appropriate in a Green Belt, and that it will not affect openness.*
73. *Emerging policy also suggests that consideration of a range of factors is required. These are considered to be encapsulated within the tests set out by the Courts in the Holmwood case as described above. Landscape character effects are considered further below. The application is for minerals development which can only be undertaken where resources are located. The vast majority of the open countryside in Rotherham is Green Belt and only small areas of PEDL 304 lie outside the district. These areas are also in Green Belt in the adjacent Authorities. It is concluded that the proposed development accords with these elements of both national and local policy.'*
74. This analysis changes little with the fence:
- (a) the duration of the activity remains extremely limited, with the fence only being present for 8-10 months of the 5 year project.
- (b) the extent and nature of the proposed development remain necessary for the proposed operation, given the concerns raised by the Council and 3rd parties on noise effects, and the extensive discussions that have been undertaken both before, and during this Inquiry on noise matters.
- (c) the proposals are entirely reversible.

75. We therefore consider that the fence sits within the policy and caselaw framework already considered for the remainder of the development. The original application included a 2m Heras fence (is in fact two fences one on each side of the access road) which would of itself cause visual change, and effects on Green Belt openness, and which was included in the proposal for all 5 years.
76. However, RMBC suggest that they now have concerns in respect of the visual effects of the fence and whether this affects openness. The landscape officer and the Appellants' landscape witness both conclude that the fence will have visual effects, but the temporary nature of the development limits the effect such that it is acceptable.
77. The most recent landscape response states that:
- (a) the noise reduction benefits may be considered appropriate mitigation despite the visual intrusion of a temporary 3m high fence.
  - (b) the temporary 3m high acoustic fence should be viewed in the same context as the test drilling application.
78. Notwithstanding this, the Council requested a position on very special circumstances, to justify the provision of the fence. The Appellants consider that, in the event that the decision taker wishes to take into account very special circumstances, and in the event that a 3m fence is considered necessary, these would be:
- (a) the support given by Government to the need to explore the UK's shale reserves, as set out in NPPF, and the various WMSs, including the most recent of 23 May and that of 17 May 2018, which confirm that undertaking this activity is of "national importance" and should be given "great weight" and that gas has a "key part to play" in meeting Climate Change Act objectives and that "it is right to utilise our domestic gas resource to the maximum extent". It also confirms that "This includes shale gas exploration ..." This may be a unique position in terms of Government policy support for a particular development type.
  - (b) the noise benefits of the additional fence during stages 1 and 2 of the development, particularly those noise benefits arising during the construction of the site access road, for the closest receptors at Berne Square.
  - (c) The acceptance by the Council in relation to this appeal (and at Harthill, and indeed Derbyshire County Council and the associated Inspector accepted at Bramley Moor Lane) that development of this scale and nature preserves openness and therefore does not represent inappropriate development in the Green Belt, as noted in the Board report of 7 September 2018.
79. In this context, it is relevant to consider the very limited extent of harm by virtue of the temporary nature of this element of the development, including its limited period of installation (limited to that which is truly necessary), reversibility and lack of enduring effect on what, by its nature, is a long term designation.
80. The Appellants consider that whilst the fence will cause visual change, it will preserve openness as it will not result in any enduring harm to openness. This contrasts with the example project which the Council cited (RB2019/0356) which was for a permanent development which would not have preserved openness and

would have caused enduring harm. It is also in contrast to the Euro Garages case, which was a “limited infilling” case.

### ***Prejudice and changes to application proposals***

81. RMBC’s position on this matter is noted, in particular their statement that they have been able to gather sufficient evidence to consult with their internal departments. RMBC notes that the Appellants have not yet made their position clear on whether the change to the application is substantial or whether they consider that third parties may have been prejudiced. WAF also has a position on this matter, however, the Appellants’ position on prejudice is as follows:
82. The Council did not raise noise issues until elected Members suggested a reason for refusal including noise at Planning Board in September 2018. Due to the lack of objection from Officers, it was not necessary or possible to suggest any noise mitigation prior to that point.
83. The Appellants then needed time to consider whether they would appeal and take advice. Part of that advice was to seek to agree an appropriate noise baseline. Given the widely differing baseline results obtained by the Appellants and WAF. A different base line could necessitate consideration of different mitigation.
84. The process was undertaken over the following months, as a joint survey between the Appellants, RMBC and WAF, with WAF ultimately being able to secure a monitoring position within a garden at Berne Square that was deemed to be representative by all parties.
85. The monitoring results were shared regularly, and monitoring was extended due to suggestions that certain local activities made the measurements unrepresentative. This took many weeks to resolve.
86. Without suitable baseline data obtained and agreed, it was not possible for the Appellants to make meaningful progress on potential mitigation. This was a matter which was considered to be appropriate to review, given the concerns raised by both the Council and WAF.
87. The potential 3m noise fence was submitted to both parties on 24 April 2019, following these extensive discussions on noise baseline monitoring. This was intended to help further discussions on common ground. This submission contained all of the information that was submitted to the Inquiry in the Appellants’ Technical Appendix 2 (Noise predictions report).
88. The Appellants’ evidence (14 May 2019) included consideration of the potential fence including a detailed application drawing, and consideration by the key experts.
89. This evidence was uploaded to the Council’s website on 15 May and the technical note from the Appellants’ noise witness was uploaded on 24 May. Appeal site notices were erected by the Council on 28 May, which advertised the appeal. The noise fence was subsequently made public on a wider basis by WAF on their Facebook page on 30 May 2019, and an article was also run on “Drill or Drop” on 30 May. “Drill or Drop” is a national coverage press website and is widely read by those with an interest in onshore oil and gas. The fence was also mentioned in an article in the Guardian on 11 June when the Inquiry opened. Therefore, the inclusion of the fence was well publicised by, and to, those interested in the

Inquiry. These posts included a physical “mock up” of the fence and a “photomontage”.

90. The Inquiry heard from members of the public and WAF, all of whom are aware of, have had and still have the ability to make their views on the potential fence known. The views of those interested in the fence have therefore been heard by the Inquiry. Indeed, WAF represent all or most of the local community, and have particularly promoted the views of those most likely to be directly affected by the fence. Local Councillors also attended the Inquiry.
91. In addition, members of the Parish Council have attended the Inquiry, and two of them attended the relevant section of the site visit, where the fence panels were erected, showing both a 3m and 2m fence. The Inspector allowed residents to provide their statements at times which suited them, including an opportunity after having seen the fence panels on site.
92. On this basis, the Appellants consider that there is no practical prejudice to those individuals with an interest in the Inquiry. The substance of the proposal has been known by the parties for some 6 weeks before the Inquiry started, and 2 weeks before evidence was due to exchange. Detailed evidence was provided some 4 weeks before the start of the Inquiry. The information submitted later in the process, in the form of two Inquiry notes, was information focussed on detailed clarification of the fence, its construction method and its appearance as requested by RMBC. This was not material fundamentally necessary to understand the concept of a 3m noise fence. No party to this inquiry has been unaware of, or deprived of the right to make their views known on, this matter. The Appellants do not therefore consider there to be any practical point around the issue of prejudice.
93. RMBC has also asked for the Appellants’ position on whether the addition of the fence is a substantial change. The Appellants’ position is that it is not a substantial change, under the terms of the *Wheatcroft* case. The appeal proposal, with the noise fence, remains in substance that which was applied for. *Wheatcroft* explains that the main factor in considering this is whether the development is so changed that to grant it would be to deprive those who should have been consulted, the opportunity of such consultation. As noted above, the Appellants do not consider any reasonably interested party to have been deprived of knowledge of the fence proposal, or the ability to comment on it.
94. The Appellants’ view is that the addition of the fence does not represent a substantial change, for the following reasons:
  - (a) There is already 2m high fencing proposed on approximately the line of the noise fence. The fencing is of a different type (Heras) but nonetheless, in the worst case scenario, is a fence which is some 2/3rds of the height of the possible fence, and the same as the 2m fence option. This fence has the potential, as part of dust mitigation measures, to be faced with green mesh material, which would mean, visually, that it would be a virtually solid barrier with visual effects. That would be a matter of discharge of conditions.
  - (b) The nature of the application has not changed (i.e. it is still an exploratory well, with associated surface development, vehicle movements, development timescales, etc).

(c) The red line area of the application has not extended or altered at all.

(d) The fence could ensure, if thought appropriate to include, that noise issues are addressed, which should meet the noise concerns of the interested parties and therefore has material benefit for those living closest to the site.

95. In addition, a condition was already proposed in the officer report which provided for noise mitigation to be installed should noise emitting plant not be compliant with noise levels set in other conditions. It is a feasible outcome that, had permission been granted as recommended by Officers, a barrier of some description may well have been agreed through discharge of that condition.

#### *Conclusion on the fence*

96. In addition, it is submitted that it is now accepted that a 2m fence would be permitted development and so no permission would be required. A Heras fence is already proposed in a similar location. The issue then relates to any fence above 2m in height, and the difference in height above 2m. It is also on the evidence clear that a 3m fence cannot be justified as reasonable. On this analysis the issue is a very minor one indeed – being possibly up to but less than 1m of timber fence. It is difficult to imagine this is a determining issue in the scheme of this proposal. It is also difficult to understand why this minor issue has been the focus of so much attention. Finally, in the event that conditions are imposed requiring a 3m fence, it is submitted that the matter be dealt with as suggested by RMBC, namely it should be included in the permission granted.

#### **Highways issues**

97. The Appellants have reviewed development traffic flows and consider them to be low, regardless of whether the 'value of 70' (maximum daily vehicle movements) is considered or average construction traffic flows are considered. The latter is considered to be a more accurate representation and in keeping with standard practice.
98. Highway officers have indicated that the proposed route can accommodate existing two-way vehicular flows and the predicted development traffic and that there is no evidence to suggest that incidents would be exacerbated by the development.
99. Also, 5 professional independent transport consultants, asked whether they could advance RMBC's appeal case, concluded that they could not establish a sound evidential basis for maintaining, on behalf of the Council under the appeal process, that the development traffic would have any impacts on the highway network in terms of either highway safety or capacity that would be unacceptable.
100. This led to an urgent Item Report to the 14th March 2019 Planning Board which recommended that the Planning Board withdraw the highway reason for refusal. The Report also indicated that Counsel for the Council at this Inquiry endorsed the recommendation. Members concurred with this view and RMBC no longer objects to the appeal proposal on highway safety grounds.
101. However, WAF continued to object to the proposal on transport grounds despite all of the technical experts (RMBC's highways officers, the 5 professional independent transport consultants approached by the Council and the Appellants'

transport witness) agreeing that there are no grounds for a refusal on transport grounds. WAF's position regarding highway safety and other transport matters have been fully considered and it has been concluded that there is no sound material basis for their objection on transport grounds.

102. In terms of NPPF paragraph 108, it is concluded that safe and suitable access can be provided and that the mitigation proposed is appropriate and acceptable. In terms of paragraph 109, which states that development should only be prevented or refused on highway grounds where there would be an unacceptable impact on highway safety or where the residual cumulative impacts on the road network are severe, it is concluded that there is no unacceptable impact on highway safety and that there is no residual cumulative impact and the impact cannot be considered to be severe. This advice was also given to RMBC by highway officers. NPPF paragraph 110 is applicable to this development proposal.
103. The concerns of other interested parties have also been addressed. The Appellants' evidence is that there are no transport-related reasons that should prevent the proposed development from being approved at appeal.

### **Residential amenity**

104. All of the project specific health hazards raised within the third-party representations are inherently addressed within the regulatory planning and permitting process set to protect the environment and health and have been assessed and addressed within the submitted ER.
105. The remainder of health concerns raised are in relation to different projects, of different scales, on different continents operating to different regulatory regimes, which would not be permitted in the UK.
106. Overall, having reviewed the ER and supporting information, and having regard for the regulatory process and responsibility of regulatory authorities, it is the Appellants' opinion that the ER and subsequent assessment work undertaken on noise constitutes a thorough investigation of the potential health effects of the proposed project, is compliant with all environmental standards set to protect health, and that changes in environmental health pathways neither present a concentration or exposure sufficient to quantify any measurable adverse health outcome to local communities.
107. This conclusion is further supported in that neither the Environment Agency, the Health and Safety Executive and Public Health England raise any formal objections on public health grounds; and no third party representation presents evidence to suggest any adverse health outcome directly attributable to what is proposed.

### **Comments on RMBC's closing submissions**

108. The reason for refusal is clear and unambiguous in its terms. It is concerned with noise nuisance and general disturbances '*due to the close proximity of the proposed access*'. It is beyond doubt that RMBC has widened its case to include noise from the rig. Why this was done must remain a matter of speculation. However, what is not speculation is that this was done and could properly be characterised as unreasonable conduct.

109. RMBC in its evidence relied on BS 4142. Unsurprisingly the Closing Submission relied on, and is in truth, underpinned by BS 4142 (pages 10, 11, 20, 21). The slight difficulty of this approach is;
- (i) it is contrary to the clear wording of BS 4142. This standard is not intended to be applied to the rating and assessment of sound from other sources falling within the scope of other standards of guidance.<sup>12</sup>;
  - (ii) it defies and contradicts the clear ruling from Inspectors<sup>13</sup>;
  - (iii) It also defies and contradicts the Secretary of State who approved the Inspector's findings at Preston New Road (PNR) and Roseacre. It seems quite extraordinary that RMBC persist with this approach given the foregoing.
110. RMBC still rely on the Agility Acoustics background readings. The Appellants' witness explained in detail and in his proof why the readings could not be relied upon. RMBC's witness accepted they failed to comply with appropriate guidance. The approach is even more difficult to understand given that the agreement between experts relied on the joint readings for background in relation to the day and evening. Continued reliance on readings which do not comply with relevant guidance is wrong and unreasonable.
111. Comments are made with regards to the daytime/evening limits. It is critical to consider the precise wording of the SoCG(N): '*The daytime and evening noise limits based on background +10 dBs are agreed as follows*'. This does not state that these are appropriate limits. The critical issue is that there was agreement about the background levels. This is what had previously been in dispute given the Agility Acoustics attempt to record background levels. The agreement recorded here is that background levels were 40dB daytime and 36dB evening. The agreement does not say the limits 'should be' or are appropriate. It merely records the position clearly and succinctly. The wording is unambiguous. Indeed, to agree background plus 10 as the appropriate limit would be contrary to the wording of the PPGM. The precise terms are set out elsewhere but the PPGM requires a finer judgement having regard to unreasonable burden in relation to daytime limits (but not evening limits).
112. Perhaps most importantly the submission appears to proceed on a misunderstanding. Table 2 in the SoCG(N) does indeed agree levels of 65-69dB LAeq,1hr (free field) in week 1. It also agrees 62dB LAeq,1hr (free field) for weeks 2-4. However, this is to be measured against the PPGM which permits a level of up to 70dB for periods of up to 8 weeks. Critically this level of 70dB is also free field, accordingly no allowance of 3dB should be added. As a result, the predicted and agreed levels mentioned all lie within the guidance of PPGM. Even more critically, those agreed levels do not justify any barrier at all let alone a 3m barrier as suggested given the clear guidance in the PPGM.
113. RMBC's planning witness seemed to accept that very special circumstances apply in this case, albeit it was finely balanced. Notwithstanding this it appears to be suggested that 'very special circumstances' may not apply and the Appellants' planning witness was wrong for so suggesting. If this impression is correct, then this approach may also be unreasonable.

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<sup>12</sup> CD2.24 page 1

<sup>13</sup> PNR and Roseacre at para. 12.522 - Common Road CD7.10 - Bramley Moor Lane CD7.12

114. In summary then, it is submitted that the relevant professionally qualified officials of RMBC were correct in finding that there was no objection possible in relation to the noise issues. Noise should never have been promoted as a reason for refusal by the Council.

## **Comments on WAF evidence and submissions**

### **Noise**

115. The WAF submission states there was an *'attempt to concoct marginal environmental benefits from the access road' which 'do not bear scrutiny'*. According to the Cambridge Dictionary concoct means *'to invent an excuse, explanation or story in order to deceive someone'*. This allegation made in the WAF submission therefore is a serious one.
116. Due to the serious nature of the allegation the evidence that is claimed to have been invented in order to deceive will be set out:
- (i) The proposal states: *'A bellmouth to the road network would be created in accordance with standard procedures. This would be tarmacked for the first 20m approximately. The access track would be lined with a geotextile membrane and covered with aggregate to ensure the integrity of the underlying soil was maintained during site construction and subsequent site works. A dry wheel wash would be installed. An area for parking on the site would also be developed to ensure all necessary vehicles were within the site boundary. This would also be lined with a geotextile membrane and covered with aggregate. The membrane on the access track and parking area would be permeable and would ensure all material forming the site surface could be removed at restoration.'*
117. (ii) In addition, the SoCG(N), which is signed by WAF's expert, refers to *'a smooth macadam surface'*. The evidence confirmed that the access track will be an improvement in comparison with the current situation. Currently the track has a very uneven surface and is used by commercial/grain transporters (both HGVs and tractor/trailer units) as well as residential traffic. One complaint (from a WAF witness) related to dust issues which currently exist from traffic. If the track is constructed as described both in the proposal document and by the SOCG there will be environmental benefits when judged against the existing situation both in respect of noise and dust.
118. In the foregoing circumstances the WAF submission should not have made the unfounded allegation. The appropriate way forward would be for WAF to withdraw the allegation and apologise.
119. The WAF submission deals with noise very extensively. Every possible issue is fully explored in great detail. It states *'Thus WAF's position is that noise levels from the construction of the access road cannot be kept to within acceptable limits on the available evidence'*. The difficulty with this approach is that this appears to be in direct conflict with the professional opinion of their witness on noise.
120. During cross examination that witness accepted that there was no reason to refuse the proposal on noise grounds subject of course to appropriate conditions. This suggestion appeared to be later met with protests and denial by those representing WAF. Then it appeared the position was modified to a suggestion he was only referring to stage 1 or possibly stage 2.

121. However, an even greater difficulty arose for WAF and their representatives because it became apparent that Drill or Drop, an entirely independent organisation, had recorded the evidence in exactly the same way as the Appellants had suggested in cross examination to WAF's planning witness. Drill or Drop reported that in reply to this question '*You do not object to this application with the right mitigation?*' the WAF witness replied '*Correct*' and this was confirmed by the Appellants' planning witness.
122. What this means is that WAF have no evidential basis from its own expert to suggest that permission be refused on noise grounds. The lengthy and detailed submission on behalf of WAF must be looked at with very considerable caution, possibly scepticism, against the background of the evidential position.
123. The position of WAF is even more difficult to understand when consideration is given to the noise conditions that WAF wish to see imposed. The conditions confirm (cross referenced to the SOCG) that
- (i) all stage 1 activities can be undertaken with no noise fence
  - (ii) the conditions WAF ask for are identical to the INEOS conditions
  - (iii) the stage 2 limit applies only to vehicle movements and not the drilling activities in the first suggested condition
  - (iv) the stage 2 evening activities require no noise fence
  - (v) none of the WAF suggested conditions justify a 3m fence

Why then the submission argues for a 3m fence is difficult to understand.

124. Notwithstanding any of the foregoing a few further points may be worthy of comment:

BS 5228: The ABC method is only a means of assessing whether a 'potentially' significant effect is indicated. The assessor must consider project specifics such as the number of receptors and the duration and character of the impact in order to decide if there is a significant impact. Even if there is a significant impact this does not mean refusal. This simply must be weighed in the balance against such issues as the national interest. BS 5228 cannot be relied upon to justify refusal on noise grounds. It cannot be relied upon to set limits.

### **Fence construction**

125. Much has been made of this in the WAF submission. However, this issue must be seen in context: No fence may yet be required; It may be 2m in height; It may only be 100m or so in length (evidence of the Appellants' witness and ignored by WAF). In addition it is, even if required, a timber fence, no more no less. The erection of a timber fence must be simple in comparison with drilling an exploratory well. Clear unambiguous evidence about methods of erecting any timber fence was given. RMBC's witness was quite certain this could be done quickly in a few days and within a noise limit of 62dB. He described the method in detail. Curiously the limit of 62dB is much less than the limit WAF wish imposed of 70dB for 5 days initial set up. WAF have not suggested this would be anything other than an environmental benefit. As such it can benefit from a 70dB limit for up to 8 weeks in accordance with the PPGM.

126. The WAF submission refers to another access. There is simply no evidence to support this suggestion. It is simply not '*clearly possible to locate an access further along ...*' There are many reasons this may not be possible – land ownership, ground conditions, arable farming considerations, junction spacing, visibility splays. It simply cannot and should not have been suggested. It is at best speculation.

### **Equality Act**

127. The WAF submission deals again in great detail with this issue. However, the position is really very straightforward. The Equality Act 2010 at s.149 requires that a person exercising public function has due regard to various issues. In particular to the need to eliminate discrimination, harassment and victimisation. Whether the residents of Berne Square are within the category of persons the Act has in mind must be a matter of judgement based on evidence. Even if the residents are indeed protected by the Act then the needs/requirements of the residents have been fully assessed by virtue of the development plan.

128. In any event and separately the Appellants have fully considered the residents of Berne Square. Their noise witness gave evidence that if one considers the residents as vulnerable people nevertheless their interests have been fully considered and protected by virtue of applying the WHO guidelines. All the relevant evidence is before the Inspector and Secretary of State. The decision taker will no doubt have proper and due regard to all issues including the residents of Berne Square before deciding whether to grant permission subject to conditions.

129. There really is nothing in this point at all. The *Buckley* case is simply not relevant; this related to the demolition of peoples' homes and whether the interests in that context had been properly considered. That is far removed from the current circumstances where there are no such proposals and all issues have been properly and fully aired at a Public Inquiry which took place before any decision is taken. Every opportunity has been given to Berne Square residents and to those acting on their behalf to express any concerns. No doubt decision takers will have due regard to all these issues.

### **WAF Traffic Issues**

130. This issue must be seen in the context that all relevant officials of RMBC cannot and do not support an objection. Several responsible and reputable firms likewise could not support an objection. WAF's witness has no relevant professional qualifications whatsoever. His experience is at best limited in comparison with others.

131. With reference to a few paragraphs of the WAF submission<sup>14</sup>:-

12. PPG para. 13 is quoted. This is not a Transport Assessment. The submission misunderstands the position.

13. NPPF10 – this is wrong (see Mr Martin paras. 5.12-5.14)

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<sup>14</sup> See original ID 42 for full text and original numbering

- 15-20. Average flows. The Appellants' witness is highly experienced; in his experience average flows are always used. In any event flows are low.
28. Sunday working. This relates only to staff/security minibuses not HGVs as should be obvious.
45. The Roseacre reference was only to new passing places nothing more.
53. Vulnerable users. The only assessment was done by the Appellants' witness; all matters were slight or neutral. There is nothing in this point.
69. The site visit demonstrated that the driver view would be impaired by the pre-existing hedges/bushes. Accordingly, this entire point is wrong.
132. There was nothing in the evidence of WAF's witness that can possibly justify refusal on traffic grounds. Accordingly, there can be nothing in the submission to justify refusal either. The reliance he placed on the PNR/Roseacre decision is misplaced. That proposal was refused by virtue of the significant deficiencies in all of the possible access routes by virtue of widths and other obstructions. A brief read of the decision confirms that the reliance on that decision to suggest refusal here has merely confirmed a lack of experience or understanding. The professional judgement of all relevant officials of RMBC, the several firms of traffic engineers and of course the Appellants' witness on traffic should be preferred to the suggestions of WAF's witness.

### **Planning balance**

133. The appeal proposal has been considered in the light of both adopted and emerging policy. The full range of technical disciplines and issues that have been raised by the parties interested in this Appeal have also been considered.
134. S38(6) of the Planning and Compulsory Purchase Act 2004 sets out that if regard is to be had to the Development Plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise. The Appellants consider that the proposed development accords with the development plan and therefore conclude that the Appeal proposals should be approved unless material considerations indicate otherwise.
135. The benefits of granting the Appeal are noted which are considered to weigh in favour of the development, and RMBC's officer's professional opinion as expressed in their Board Report of 7 September 2018<sup>15</sup>, which also concluded that this development should be approved.
136. RMBC, and ultimately elected members, accepted that highway safety and transport effects were not a defensible reason for refusal, based on the opinions of officers and a number of qualified transport consultants working for nationally recognised organisations.
137. The contents of the relevant WMS are noted and it is considered that these carry significant weight in decision making. The WMS<sup>16</sup> suggests that the appeal proposals should be approved, as there is a '*national need*' to explore our shale

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<sup>15</sup> CD7.1

<sup>16</sup> CD2.3 and 2.4

resources in a *'timely manner'* and that development of this nature is of *'national importance'* and that *'great weight'* should be given to mineral extraction, including shale gas exploration. This is further supported by the obligations on the Appellants under the PEDL, which is in turn an expression of the legal obligation on Government to maximise the potential of the UK's petroleum resource.

138. The material considerations therefore weigh very heavily in favour of granting permission. The appeal proposal accords with both national and local policies and there are no material considerations which outweigh this. It is therefore respectfully requested that the decision taker agrees with this conclusion and upholds the appeal.

#### **APPELLANTS' COMMENTS ON WMS ISSUED ON 4 NOVEMBER 2019**

139. The Appellants welcome the continued recognition in the WMS that the UK needs gas, and that gas use will retain a role as part of our transition to a low / net zero carbon future. We also welcome the continued recognition that domestic gas production has economic benefits and accept that the policy position of Government remains that shale gas development needs to be safe and sustainable. These matters are little changed from the previous WMS's to which the Appellants referred during the Inquiry.
140. The Appellant considers that the evidence put forward during the Inquiry demonstrated that the appeal proposals are safe and sustainable, which is in accordance with the approach advocated in this WMS. The WMS notes that it remains policy to minimise disturbance to those living and working nearby, and to prevent the risk of any damage. These topics were the subject of lengthy debate at the Inquiry and the Appellants do not intend to rehearse those arguments again. Suffice to say that the Appellants consider that the appeal proposals will minimise disturbance and that there is no risk of damage to property.
141. The majority of the WMS is focussed on seismic risks and hydraulic fracturing. The appeal proposal does not involve hydraulic fracturing and no seismic risks are anticipated. This was a matter of agreement in the SOCG between the Council and Appellants (para 6.16 of the agreed SOCG). The Appellant agreed with WAF that content on induced seismicity would be removed from their SOCG, as WAF were not qualified to comment on this matter. This was also not a topic discussed at the Inquiry.
142. The appeal proposal is purely for a vertical coring well, the data for which will be used to further enhance our understanding of the local geology and inform any future decisions. There are no proposals for appraisal or production to which this latest WMS refers.
143. Much of the WMS focusses on the seismic effects of a single operation during hydraulic fracturing operations, by a different operator, on a specific site with its own specific geological conditions. It recognises that the causes of seismicity during hydraulic fracturing operations are highly dependent on local geology. This is neither relevant to the appeal site, nor is it relevant to the appeal development. The appeal development would not require a hydraulic fracturing consent. In short, the content of the WMS is focussed on a matter which has no bearing on the appeal proposals.

144. We also note that the latest WMS does not cancel or alter the status of the previous WMS, to which the Appellant referred at the Inquiry. The issues debated at the Inquiry have nothing to do with seismic activity or the WMS of 4 November 2019. The Appellant believes they are entitled to a decision based upon the evidence presented at the Inquiry.

## THE CASE FOR RMBC

**NB** *RMBC's Closing Submissions, the full text of which can be found at ID 43, have been summarised in the following paragraphs.*

### Noise issues

146. The retained reason for refusal cites RMBC Policy SP52 'Pollution Control', which states that development proposals that are likely to cause pollution will only be permitted where it can be demonstrated that mitigation measures would *'minimise potential impacts to levels that protect health, environmental quality and amenity. When determining planning applications, particular consideration will be given to: a. the detrimental impact on the amenity of the local area, including an assessment of the risks to public health. b. the presence of noise generating uses close to the site, and the potential noise likely to be generated by the proposed development. A Noise Assessment will be required to enable clear decision-making on any planning application...'*
147. Policy SP52 specifically references not just impacts to health, but also impact on environmental quality and amenity. The impacts relevant to RMBC's objection therefore extend well beyond the health impacts and pathways discussed within the limited scope of the Appellants' evidence on health matters.
148. Furthermore, Policy SP52 requires mitigation in order to minimise potential impacts. The policy imperative is, therefore, not simply a requirement to reduce, but to minimise – a point that is also relevant in relation to the PPGM.
149. The overwhelming majority of national policy on noise impacts is qualitative, rather than quantitative<sup>17</sup>. The NPSE<sup>18</sup> sets out *the 'long term vision of Government noise policy'* and the following Noise Policy Aims:
- a. Avoid significant adverse impacts;
  - b. Mitigate and minimise adverse impacts; and
  - c. Contribute to the improvement of health and quality of life.
150. Moreover, although both the National Planning Policy Framework (NPPF) and NPSE require the identification of a NOEL, LOAEL and SOAEL for each given proposal, no methodology for doing so is stipulated, nor are values provided. Indeed, this is hardly surprising given that each site (and each proposal) will have its own unique relationship between source and receptors.
151. Nevertheless, even in the absence of any suggested values, consistent with both Policy SP52 and the NPPF, the NPSE requires applicants to *'avoid'* significant adverse impacts and *'mitigate and minimise'* adverse impacts.
152. Thus, as all three noise experts agreed, the overriding policy expectation is that operators will have to take steps to avoid significant adverse impacts and mitigate and minimise adverse impacts. The practical effect being that this may, in appropriate circumstances, either require the selection of a different site and/or that particular steps are taken to reduce the impacts of a given proposal.

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<sup>17</sup> NPPF, para 180 [CD 2.1] and the Noise Sites and policies document [CD 3.2]. Noise Policy Statement for England [CD 2.17]

<sup>18</sup> CD 2.17

On the facts of a given case, those steps might sometimes be quite onerous, without necessarily being unreasonable.

153. See, for example, NPSE, para 2.22: '*...It is not possible to have a single objective noise-based measure that defines SOAEL that is applicable to all sources of noise in all situations. Consequently, the SOAEL is likely to be different for different noise sources, for different receptors and at different times.*'
154. The primary planning guidance on noise generated by mineral extraction operations is the PPGM. Of particular relevance are paragraphs 019 – 022. During evidence, reference was also made to the Planning Practice Guidance: Noise (PPGN), but all experts acknowledged that neither PPGM nor PPGN provide comprehensive guidance on all relevant noise matters. For example, and as noted above, although both refer to SOAEL and LOAEL, no methodology is provided for quantifying those values. Therefore, it is necessary to look elsewhere for such a methodology.
155. There are a number of British Standards and WHO guidelines that provide assistance in this regard. BS 4142 provides the primary methodology for assessing the impact of industrial and commercial noise on residential properties. A number of other passages from BS 4142 are also relevant such as the Foreword and Section 11: Assessment of Impacts.
156. The Foreword, notes that: '*...response to sound can be subjective and is affected by many factors, both acoustic and non-acoustic. The significance of its impact, for example, can depend on such factors as the margin by which a sound exceeds the background sound level, its absolute level, time of day and change in the acoustic environment, as well as local attitudes to the source of the sound and the character of the neighbourhood.*'
157. Section 11 notes that: '*The significance of sound of an industrial and/or commercial nature depends upon both the margin by which the rating level of the specific sound source exceeds the background sound level and the context in which the sound occurs. An effective assessment cannot be conducted without an understanding of the reason(s) for the assessment and the context in which the sound occurs/will occur. When making assessments and arriving at decisions, therefore, it is essential to place the sound in context.*'
158. Although BS 5228 and PPGM provide specific guidance for particular types of noise, and in the case of PPGM at certain times of the day, a number of principles derived from BS 4142 nevertheless remain valid and worthy of consideration; namely that: a. People's response to noise depends on lots of different factors; b. The margin by which the noise exceeds the background is relevant; c. Context needs to be considered; and d. Local attitudes to the noise source(s) will affect the response.
159. Although it was argued that amenity is not an issue at night and, therefore, levels above background are not relevant, that argument overlooks the fact that, if people are lying in bed awake, they will be aware of, and be affected by, what they hear. If they can hear something, their response will be influenced by things such as context and the difference between background and specific level.

160. BS 8233: 2014<sup>19</sup> *'deals with control of noise from outside the building, noise from plant and services within it, and room acoustics for non-critical situation'*. Indeed, BS 8233 *'suggests criteria, such as suitable sleeping / resting conditions, and proposes noise levels that normally satisfy these criteria for most people. However, it is necessary to remember that people vary widely in their sensitivity to noise, and the levels suggested might need to be adjusted to suit local circumstances'*.
161. The subjective, as well as objective, impact of, and response to, noise is an important consideration. In this instance, there are a significant number of residents who will be affected by noise generated by the proposal and most, if not all, have voiced concerns. Subjectively, their response may well be heightened because it is an unwanted noise, coming from an unwanted source.
162. Table 4, page 24 of BS 8233: 2014, which, for bedrooms during the night, provides a figure of 30dB LAeq, 8h, for noise *'without character'*. However, the accompanying text says that *'noise has a specific character if it contains features such as a distinguishable, discrete and continuous tone, is irregular enough to attract attention, or has strong low-frequency content, in which case lower noise limits might be appropriate'*. This, therefore, suggests that a lower level is appropriate for bedrooms affected by noise that has specific character such as an exploration drill.
163. During evidence, reference was made to a number of relevant sections from WHO's Guidance on Community Noise (GCN)<sup>20</sup> dealing with relevant concepts. RMBC's evidence is that, taken as a whole, this document re-enforces the guidance in BS 8233:2014 that levels below 30 dB LAeq, 8hr can cause annoyance and/or disturbance.
164. WHO NNG<sup>21</sup> is an extension of the GCN, which provides a number of *'Recommendations for health protection'*, including that *'closer examination of the precise impact will be necessary in the range between 30dB and 55dB as much will depend on the detailed circumstances of each case'*.<sup>22</sup> NNG also notes that *'vulnerable groups (for example children, the chronically ill and the elderly) are more susceptible'*.<sup>23</sup>
165. BS 5228 refers to the need for the protection against noise and vibration of persons living and working in the vicinity of, and those working on, construction and open sites, whilst paras 6.1 and 6.3 acknowledge the disturbing effects of noise and issues associated with noise effects and community reaction.
166. BS 5228: 2009 Part 1<sup>24</sup> refers to the need for the protection against noise and vibration of persons living and working in the vicinity of, and those working on, construction and open sites, whilst paras 6.1 and 6.3 acknowledge the disturbing effects of noise and issues associated with noise effects and community reaction.

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<sup>19</sup> CD 2.19

<sup>20</sup> CD 2.20

<sup>21</sup> CD 2.21

<sup>22</sup> Executive Summary page XVI

<sup>23</sup> Executive Summary page XVII

<sup>24</sup> CD 2.18

### ***Application of policy and guidelines to the Proposal***

167. The Appellants' position as to the relevance of the above standards and guidance was inconsistent. At times, it was suggested that for night-time noise, the relevant guidance can be found in the WHO guidelines (the GCN and NNG) because they deal with sleep disturbance and health effects. However, when it came to guidance about complaints, their witness appeared to revert back to reliance upon BS 4142 instead.
168. Although their witness agreed that the WHO guidelines may well provide appropriate guidance about the likelihood of being woken up by noise, which is the sole aspect of sleep disturbance that he focussed upon, not being able to get to sleep is also sleep disturbance, albeit a completely different effect. Indeed, when considering sleep disturbance, it is illogical to suggest that the noise level outside is the only thing that matters. In reality, the only thing that will matter to the person inside is the noise level at their ear. For any given noise level outside, the level at the person's ear will self-evidently be different if the bedroom window is open compared with if it is closed.
169. Yet the WHO Guidelines (2009) do not even attempt to provide a threshold / limit for effects such as difficulty in getting to sleep: see Table 2, to which a footnote is attached, which states that '*although the effect has been shown to occur or a plausible biological pathway could be constructed, indicators or threshold levels could not be determined*'. Moreover, when considering audible noise from an unwanted drilling rig when lying in bed not being able to get to sleep, it is likely to be an amenity issue, rather than a sleep awakening / health issue. The Appellants' witness acknowledged that reference to background / BS 4142 is relevant to a consideration of amenity.
170. In light of the above, RMBC maintains that:
- a. References to the WHO Guidelines (2018) are not valid because that document expressly does not deal with industrial noise. Moreover, there is ambiguity in the WHO guidelines as to what '*industrial*' actually means and the distinction between industrial noise and industrial areas. For example, in the WHO guidelines (1999)<sup>25</sup> there is a limit of 70dB LAeq for industrial areas, but this is clearly talking about noise actually in an industrial area, rather than the level of noise that would be acceptable to someone in their house affected by industrial noise. Furthermore, trying to use those guidelines to assess the impact of noise from a specific source on a housing estate is putting the cart before the horse, when their aim is to develop national and international strategies for residential development.
  - b. The Appellants' witness acknowledged that WHO Guidelines (2018) refer the reader back to the WHO Guidelines (1999) for '*industrial noise and shopping areas*'. In this regard, the WHO Guidelines (1999) state that '*however it should be recognised that equal levels of different traffic and industrial noises cause different magnitudes of annoyance*'. The Executive Summary suggests that the Appellants' argument that drill noise can be compared to road traffic noise is flawed.

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<sup>25</sup> Page xv, Table 1,

c. The Appellants' manipulation of  $L_{\text{night}}$  is not valid. In the WHO guidelines (2009) the equation is:  $L_{\text{night, outside}} = L_{\text{night, inside}} + Y$ . Therefore, the formula is clearly intended to calculate  $L_{\text{night, outside}}$ , from the other two quantities, rather than the other way around. Furthermore, the WHO guidelines (2009) do not state that they are based on noise levels measured outside. Even if they were, it would not make any material difference to the point that the Council's witness was making, since the formula (above) is quite clear that the  $L_{\text{night, inside}}$  is 21dB lower than the  $L_{\text{night, outside}}$ . So, if it is 40dB outside, it is 19dB inside: see WHO guidelines (2009), Formula 3. By stating in the next section that the loss through an open window is 10-15dB, it follows that for properties with bedroom windows open, the indoor LOAEL of 19dB  $L_{\text{night, inside}}$  translates to an outdoor LOAEL of 29-34dB  $L_{\text{night, outside}}$ .

d. Reliance upon the WHO Guidelines (2009) ignores the fact that the document states '*when windows are slightly open, outside sound levels are usually reduced by 10-15dB*'.<sup>26</sup> It was consistently claimed that reduction through a slightly or partially open window would be 15dB, and that the lower figure of 10dB would only apply to wide open continental style, full wall windows. However, that is clearly not what the document states.

### **Stage 1 Construction of access road**

171. The levels predicted in the documentation submitted in support of the Application predicted unacceptably high noise levels: see the Environmental Report<sup>27</sup>, as follows:

- a. Page 2-2, which, of the three BS 5228 approaches for determining the 'Significance of Noise Effects', the ABC method is appropriate in this instance;
- b. Para 2.5.1 and Table 2.13, which identifies applicable daytime noise threshold (via ABC method) as 65dB  $L_{\text{Aeq, T}}$ ; and
- c. Table 2.13, which predicts façade levels of up to 81dB  $L_{\text{Aeq, 1hr}}$ , at Berne Square during construction of access road.

172. Although the suggestion, at that time, was that levels of this magnitude would only persist for around 2-3 weeks and so, therefore, the effects would not be likely to be significant, it is now common ground between the noise experts that such levels would far exceed the noise threshold in BS 5228 and would clearly be unacceptable. Indeed, those predicted levels would suggest that the Appellants' approach has required the retro-fitting of mitigation proposals.

173. Furthermore, based upon the unchallenged evidence before the Inquiry, it is appropriate to consider the Berne Square residents as vulnerable and likely to be more, rather than less, sensitive to unwanted noise. On that evidence, therefore, there is no justification for relaxing the 65dB  $L_{\text{Aeq, T}}$  limit.

174. As to the evolving nature of the Appellants' proposed noise mitigation:

- a. The Appellants' Technical Appendix entitled Woodsetts Additional Noise Predictions<sup>28</sup> was intended '*to take account of mitigation strategies*', further to a

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<sup>26</sup> Page 11, section 1.3.5

<sup>27</sup> CD 1.7

<sup>28</sup> CD 7.28

number of scenarios considered which included i) a 3m acoustic barrier; along with changes to ii) the amount and type of vehicles proposed to be used, as well as their movements. Table 2.2 presents a series of predictions, with Scenario 3 suggesting a reduction to 66dB LAeq 1hr, which is nevertheless still 1dB(A) higher than the BS 5228 noise threshold. Furthermore, the predicted levels are free-field levels so, in reality, are 3 to 4dB(A) higher than the BS 5228 noise threshold. Therefore, even with 3m high fence, the predicted levels would still not fully be compliant with threshold in BS 5228.

b. The Appellants' Inquiry Note: Detail of Proposed Noise Attenuation Fence did not really take things materially further from a technical perspective as no new data was produced.

c. The Appellants' Inquiry Document: Further noise fence details included further noise calculations based upon further '*embedded mitigation*' (i.e. vehicles and movements), as well as a range of options in relation to the acoustic barrier.

d. After two days of discussions, the noise experts produced a SoCG(N), which included the following agreed predicted levels for stage 1:

i. In week 1, the predicted noise exposure levels during the construction of the access track in Stage 1 would be 65-69dB LAeq, 1hr, free field (as shown in Table 2, for the barrier/no barrier scenario equating to 68-72dB LAeq, 1 hour, facade) and are agreed.

ii. In weeks 2-4, the predicted noise exposure levels during the construction of the access track in Stage 1 would be up to 62 dB LAeq, 1hr, free field (as shown in Table 2, and equating to 65dB LAeq, 1 hour, facade).

175. Thus, even on the basis of the most recent predicted levels, and even with a 3m high 270m long acoustic barrier being provided and retained for stages 1 and 2, there would be a risk of the levels exceeding the 65dB threshold. Without that barrier, there is clearly an even greater risk of exceedance. The impacts of that increased risk would be experienced most acutely by residents in Berne Square, whom it is agreed are particularly vulnerable to such impacts.

176. Therefore, the evidence of RMBC's and WAF's witnesses is that a 3m high 270m long acoustic barrier would be required. Indeed, the Appellants' witness agreed that, in the circumstances of this case, such a barrier would represent best practice.

177. In terms of risk, a residual issue left unresolved by robust technical evidence is the potential noise impact from the construction of an acoustic barrier. Given the potentially serious implications, the 'back of an envelope' assessment described by the Appellants' witness during cross examination should not be considered acceptable.

### **Stage 2 - Operational noise**

178. Again, the relevant starting point is the ER, which confirms that stage 2 operations will be 24hr a day. Table 2.15 presents predicted free-field levels of up to 39dB LAeq, T in Berne Square (+/- 3dB), which was acknowledged as being the basis for the Appellants' claim that because this is lower than 42dB LAeq, T, the proposal would not result in a significant adverse impact to quality of life.

179. However, it was agreed that the figure of 42dB is not said in PPGM to be acceptable in all circumstances, and it certainly is not synonymous with the LOAEL in all circumstances, otherwise the words '*in any event*' would be redundant and no requirement to reduce to a minimum below that level would have been imposed.
180. Furthermore, the table set out in PPGM, para 5, makes it clear that the requirement to mitigate and reduce to a minimum applies to the observed adverse effects which occupy the ground between the LOAEL and the SOAEL. In other words, it is below the SOAEL that the requirement to mitigate and reduce to a minimum applies, which is precisely what the Inspector held in the PNR and Roseacre appeal decisions. Such an approach was upheld by the Secretary of State on at least two occasions, which suggests that there remains a need to refer to the other guidance summarised above, alongside a requirement to consider background noise levels, which is why such extensive survey work has been carried out in this instance.
181. As to those background levels:
- a. The ER [CD 1.7], at Figure 3-1 – July / August 2017 includes a copy of the graph appended to RMBC's noise witness's statement as Appendix 1, which shows that background levels ranged between 25 and 43dB(A), with a modal value for night-time presented as 34dB LA90, T;
  - b. The Agility Acoustics survey (July 2018) recorded a range of background noise levels. The modal value for the night-time period is presented as 20dB LAeq 15mins, with the lowest recorded level of 17dB LA90, LAeq 15 mins which is considerably lower than anything reported in Environmental Report earlier that year.
  - c. The Appellants' attempts to discount the Agility Acoustics survey (July 2018) on the basis that it does not comply with BS 7445 is irrelevant in certain respects. Indeed, wind direction / data or the lack of it has no bearing on the fact that the measured levels were consistent for a whole week and, therefore, were clearly representative of that week at the very least.
  - d. Joint monitoring took place for 4 weeks between February and March 2019. The results of that monitoring are included as Chart 7 of the Airshed Report. The modal night-time background level is said to be 33dB LAeq 15 mins. However, reference to the graph shows that the night-time background levels varied dramatically from 17dB(A) to over 40dB(A), with the lowest recorded level of 17dB(A) being exactly the same as lowest level recorded by Agility Acoustics in July 2018.
182. Overall therefore, over a period of weeks or months, the modal background level is possibly around 33dB LAeq 15 mins, but it could be much lower (around 20dB LAeq 15 mins) for a week or more.
183. As noted above, BS 4142: 2014 requires comparison of noise level generated by source, corrected for identifiable characteristics with the 'background sound level that is typical during particular time periods', which is also referred to as the representative background level.
184. The ER section 2.3.5 – states that '*modal value ... has been used to characterise the baseline noise environment in terms of the LA90. This value is not the lowest*

*sound level encountered but is representative of the baseline reflecting the likely environmental effects. This approach is consistent with other recent guidance on baseline noise such as BS 4142'. However, that statement should be approached with a degree of caution since BS 4142: 2014 - Section 8.1.4, Note 1 states that '... [a] representative level ought to account for the range of background sound levels and ought not automatically to be assumed to be either the minimum or modal value'.*

185. RMBC's Appendix 3 presents a basic BS 4142 assessment using the predicted level of 39 dB(A) from the Environmental Report and the night-time modal background level of 33 dB(A) from the most recent survey data. Applying the smallest possible correction for distinctive characteristics (+3 dB), this gives an excess of rating over background sound level of +9dB. Had the drill been operating during the week in July 2018 when Agility Acoustics undertook their survey, the excess of the rating level over the modal background level would have been +22dB. Depending on context, this could well be considered to be a significant adverse impact.
186. Therefore, RMBC's evidence remains that, depending on which background noise levels are used, the specific noise level of the drill would be 6 to 19dB(A) above the modal background noise level during the night-time period outside the window of the worst affected properties in Berne Square, which would plainly be clearly audible and noticeable.
187. It is also appropriate to consider levels inside a room with a partially open window. In those circumstances, the level would be 10-15dB(A) lower than level outside. If one takes the figure presented in Environmental Report, the resultant noise level inside a bedroom facing the rig could be up to around 29dB(A). Again, this would clearly be audible, and would possess distinctive characteristics that would stand out from the general ambient noise climate.
188. Overall, therefore, and given the spread of background levels presented in the various sources, it is possible that very low background noise levels of around 20dB LAeq 15 mins in the early hours of the morning could easily persist for days on end. If the bedroom windows were open then the noise would be clearly audible inside bedrooms, giving rise to a likelihood of annoyance and disturbance, including sleep disturbance.
189. Taking account of the vulnerabilities of residents of Berne Square, RMBC considers that a threshold limit of 37dB LAeq 1hr would be appropriate in relation to night-time noise.

### **Unreasonable burden**

190. The concept of '*unreasonable burden*' arises in the PPGM in two ways:

- a. Firstly, with reference to normal working hours (0700-1900), where the guidance is that '*where it will be difficult not to exceed the background level by more than 10dB(A) without imposing unreasonable burdens on the mineral operator, the limit set should be as near that level as practicable. In any event, the total noise from the operations should not exceed 55dB(A) LAeq,1hr (free field)*'
- b. Secondly, '*for any operations during the period 22.00 – 07.00, noise limits should be set to reduce to a minimum any adverse impacts, without imposing*

*unreasonable burdens on the mineral operator. In any event the noise limit should not exceed 42dB(A) LAeq, 1h (free-field) at a noise sensitive property'.*

191. Thus, it is necessary to consider whether the provision of a 3m high, 270m long acoustic barrier would itself impose an unreasonable burden on the Appellants, as well as whether lower thresholds would do so (day-time at 50dB and night-time at 42dB).
192. As to the provision of the barrier itself, it was suggested as appropriate mitigation by the Appellants, notably without any such caveat. Furthermore, the evidence given was that it would cost in the region of £100,000 and that it would not be an unreasonable burden. Thus, there is simply no proper basis upon which to find that its provision would place an unreasonable burden on the Appellants.
193. Turning to the question of an appropriate day-time threshold:
- a. RMBC considers that 50dB LAeq, 1hr is an appropriate threshold.
  - b. It is agreed in the SoCG(N) that, based on PPGM, the daytime limit for Stage 2 (and beyond), should be 50dB LAeq, 1hr, and the evening limit should be 46dB LAeq, 1hr. Any attempt by the Appellants to back-track from that agreement would be highly inappropriate.
  - c. According to the predictions in the SoCG(N), this is achievable with a 3m high acoustic barrier (48dB), nearly achievable with a 2m high barrier (51dB), but not achievable with no barrier (55dB).
  - d. Therefore, the only justification for allowing a higher level than 50dB would be that the erection of an acoustic barrier would place an 'unreasonable burden' upon the Appellants, yet, as noted above, that point was effectively conceded by the Appellants' witness.
194. Finally, as to an appropriate night-time threshold, the issue can be considered as follows:
- a. The Appellants' witness on noise acknowledged that, as a matter of principle, it is not unreasonable per se to impose conditions that set a threshold for noise.
  - b. It is an obvious fact that the lower the threshold, the less the impact. A threshold of 30dB, 35dB or even 37dB would deliver real benefits in terms of reducing, minimising even, the impact upon Berne Square residents. It would deliver a noticeable difference for the most affected persons and would reflect the requirements of the PPGM.
  - c. The Appellants made the point that if an imposed condition was so tight that it effectively limited the Appellants to one particular rig (or possibly a very limited number of rigs) then that would result in an unreasonable burden. However, no detailed evidence has been produced to show what the financial implications of that would be, nor did the suggestion sit comfortably with the evidence that quieter rigs are available. Indeed, the Appellants confirmed that they had never been in a position of such commercial disadvantage. By inference, therefore, they have never been put in such a position whether because of imposed conditions or for any other reason.

- d. It is also reasonable to suppose that if the Appellants knew of such a position having arisen elsewhere (whether in relation to their own operations or those of another operator), then there would be evidence of the same before the Inquiry.
- e. It would also obviously be in the Appellants' interest to work with manufacturers to ensure they get the quietest possible equipment in order to comply with any noise conditions imposed should planning permission be granted.
- f. Moreover, noise impacts during Stage 2 need to be considered more holistically than simply with reference to the rig itself. There are a number of other noise generating activities during the operational phase, any number of which could be reduced by further mitigation, without placing an unreasonable burden upon the Appellants; small incremental reductions could cumulatively equate to a meaningful beneficial impact. In this regard, there is no evidence that the Appellants have incorporated noise minimisation into the design process, rather than adopting an ad hoc process of selecting equipment and thereafter attempting to mitigate or reduce its impact. Therefore, the burden that taking those steps would impose are only assertions.
195. In terms of the Appellants' evidence as to unreasonable burden, the material produced was limited to Table 3 of the Proof of Evidence of their witness on noise, which is wholly based upon qualitative statements, with limited supporting evidence. Taking the assertion made as to the use of a quieter rig, it is limited to a statement suggesting *that 'limiting INEOS to using any specific rig would impose an unreasonable burden on the operator as that rig might not be available or could significantly increase the rental cost for the rig if the rig owner was aware that the planning permission effectively obliged INEOS to use that specific rig'*. There is simply no credible evidence to suggest that rigs and equipment that could deliver / operate within a threshold of 37dB are in such short supply that there would not be an appropriately broad market from which to procure such equipment. Indeed, such evidence is notable by its absence. Moreover, the suggested range of rental costs provided by the Appellants was c.£18k-23k per day. Therefore, even taking upper end of that range over the duration of the drilling phase would only give rise to a tiny incremental increase in costs relative to the c.£8-£10m supposedly being spent on the exploratory phase as a whole (and, apparently, with no guarantee of profit or income). There is no doubt whatsoever that the Appellants clearly have the means and resources to meet such a threshold.
196. Relevant appeal decisions, for example PNR and Roseacre, provide real evidence of no unreasonable burden having been found in similar situations previously. Indeed, one can safely assume that Cuadrilla would have been tendering in the same or a very similar market for rigs. The evidence in those instances suggests that Cuadrilla had earlier accepted such a threshold, which demonstrates that at least one other operator in that same or very similar market considered that no unreasonable burden would arise from the imposition of such a threshold. Furthermore, in those instances, because of the duration of the drilling involved, the operator was required to abide by that threshold for a longer duration than would be the case here.
197. Against the argument that the decisions at PNR and Roseacre can be distinguished from the proposal here, a longer duration at a lower threshold level

could well be seen as a greater burden to place upon an operator; not least because, if quieter rigs and equipment are more expensive to hire, a longer 'on-hire' period would cost proportionately more. Also, no evidence was offered to quantify the revenue generated as against the burden imposed. In the absence of that crucial evidence, it is not possible to make any comparative assessment.

198. RMBC considers that, properly considered, comparison with the decisions at PNR and Roseacre only bears scrutiny as supporting the need for lower thresholds here than the Appellants' preferred 42dB. The particular sensitivities of the receptors at those sites was held to justify lower thresholds, just as the acknowledged sensitivities of the Berne Square residents should justify them here.
199. With reference to whether a threshold of 37dB would be justified and proportionate, the justification is very straightforward. Such a threshold would plainly be justified, not least because it would ensure that night-time activities were less impactful. Indeed, there is no dispute between the relevant experts about the benefits that such a threshold would deliver. There may be disagreement as to the significance of those benefits, but there is certainly agreement that they would be delivered. As to whether a lower night-time threshold would be disproportionate, that requires not only a consideration of the cost, but also some sort of comparative assessment of the benefit; otherwise there would be no means of knowing whether it was disproportionate or proportionate.
200. Yet there is a distinct lack of evidence that enables any comparative assessment to be made. The qualitative assertions made by the Appellants' witnesses go nowhere near establishing that the practical effect of lower threshold values (e.g. 50dB day-time and 37dB night-time) would place a disproportionate burden upon the Appellants. Whilst there is evidence about the cost burden to the Appellants, and the Inquiry was repeatedly told that this is an exploratory well with no prospect of revenue, when that evidence is laid bare, it is, in reality, just the Appellants saying it is too expensive, but without weighing those asserted (and unsubstantiated) costs in the balance with the benefits that could be delivered. Indeed, if that point had any force whatsoever, it would effectively give operators carte blanche for exploratory sites. It would permit lower standards and greater impacts in circumstances where the operators clearly have the means to deliver justified benefits in a proportionate manner, which simply cannot be the proper approach to be taken.

### **Stage 5**

201. A further residual risk that will need to be considered if permission is granted is the noise from the decommissioning and site restoration, which was accepted to be likely to be similar in magnitude to Stage 1, for a period of up to 2 months. Again, it was agreed that it would be appropriate to retain sufficient flexibility in terms of planning conditions to mitigate those impacts as well. This may well require the re-erection of the acoustic barrier, or similar noise mitigation and sufficient flexibility would need to be retained in any noise management plan.

### *Monitoring and enforcement of thresholds*

202. In terms of monitoring and enforcing those thresholds, the noise limits in the draft conditions are to be achieved in the gardens of the residential properties.

The Appellants do not have access to those gardens by right and although they might try to rent space in one or more of those gardens, there is no certainty that any of the residents would agree.

203. Thus, noise monitoring cannot necessarily be undertaken at the location(s) where the levels have to be achieved. But until the monitoring locations are known, the required levels at those locations cannot be determined. So there is presently no way to put noise limits in the planning conditions that have to be achieved at the noise monitoring locations. All that can be done at this stage is to stipulate the levels that must be achieved in the gardens. Then, if the development goes ahead, the Appellants and RMBC would have to agree noise limits at the monitoring locations that translate to the levels in the condition.
204. Therefore, if the appeal were to be allowed, as part of any discharge of conditions application, RMBC would need to publish submitted details so that interested parties could comment and, hopefully, get a better understanding of how the condition would be met.

### **Summary**

205. With reference to Stage 1: without the provision of a 3m high 270m long acoustic barrier in the location, and with the characteristics, described in the Appellants' submission, the noise impacts from Stage 1 activities would be significant and unacceptable so as to justify refusal of the Appeal Proposal.
206. With the provision of such an acoustic barrier, the noise impacts from Stage 1 activities are capable of being adequately controlled by condition. Whilst there would still be adverse noise impacts, they would not be significantly adverse and must be considered in the context of the Proposal as a whole.
207. With reference to Stage 2: although adverse noise and disturbance impacts would still arise, the retention of a 3m high 270m long acoustic barrier during Stage 2 would provide a significant degree of protection and would control noise to a level that could be deemed acceptable under the guidance of the PPGM. Without the barrier, the noise and disturbance impacts would remain an issue of concern for the Council.
208. With reference to the appropriate daytime / evening noise limit: it was agreed in the SoCG(N) that, based on PPGM, the daytime limit for Stage 2 (and beyond), should be 50dB LAeq, 1hr, and the evening limit should be 46dB LAeq, 1hr. According to the predictions in the SoCG(N) this is achievable with a 3m high acoustic barrier (48dB), nearly achievable with a 2m high barrier (51dB), but not achievable with no barrier (55dB). Therefore, the only justification for allowing a higher level than 50dB would be that the erection of an acoustic barrier would place an 'unreasonable burden' upon the Appellants. There is no evidence sufficient to substantiate such a claim.
209. With reference to the night-time limit: both WHO guidelines and BS 4142 show the LOAEL to be considerably lower than 42dB LAeq, 1hr. Thus, 42dB is simply too high. 37dB is, therefore, between the LOAEL and the SOAEL. It is still at a level that could be expected to cause some disturbance to residents but represents a compromise between the maximum (42dB) and the ideal (35dB), reflecting the policy imperative to 'reduce to a minimum' but without imposing an 'unreasonable burden' upon the Appellants. Such a threshold can be justified on

the basis of policy, guidance and previous appeal decisions. In any event, there is no substantiated evidence to support the suggestion that such a threshold would impose an 'unreasonable burden' upon the Appellants.

210. Thus, from a technical noise perspective, the Council considers that if permission is granted, a 3m high 270m long acoustic barrier is required to be provided for the duration of Stages 1 and 2 in the location (c.10-12 months), and with the characteristics, described in the Appellants' submissions.
211. Furthermore, the Council considers that any permission would need to be appropriately conditioned from a noise perspective in order to ensure sufficient flexibility to manage the impacts of Stage 5 decommissioning works.

### ***The acoustic barrier***

212. The Appellants noise mitigation proposals have evolved during the Appeal process. It was only upon RMBC having made repeated requests for further information that the Appellants produced its 'Inquiry Note: Detail of proposed attenuation fence' (dated 5 June 2019) and 'Inquiry Document: Further noise fence details' (dated 10 June 2019).
213. Following receipt of that further information, RMBC sought comments from its landscape, highways and rights of way departments. For completeness, those departments were also referred to the photo montage document entitled Woodsetts Against Fracking: Photos from Public Rights of Way. The responses provided were referred to, and relied upon, by RMBC during evidence.
214. A number of adverse landscape and visual impacts were identified, before the landscape response concluded as follows: *'Whilst it can be considered that the 3m high acoustic fence is inappropriate development and will be incongruous to this rural setting having an adverse landscape and visual effect I would have to conclude that the acoustic benefits and temporary nature of the proposals should be given appropriate weight in the decision making process.'*
215. From a highways perspective, comments were made in respect of minor deficiencies in the plans provided, along with two points of relevance to the imposition (and discharge) of conditions should permission be forthcoming. Overall, however, the response raised no 'in principle' objection to the presence of an acoustic barrier in the location, and with the dimensions, identified. The Rights of Way response confirmed that provided the barrier is adjacent to the right of way and does not materially affect the line of the bridleway, then there are no grounds for objection in terms of highway legislation. However, clarification was sought in relation to the precise location and siting of the proposed acoustic barrier.

### ***Green Belt***

216. The site is located in the Green Belt. Policy for development in such areas is set out in paragraphs 143 – 146 of the NPPF (2019). Mineral extraction is only appropriate development in the Green Belt 'provided [it] preserve[s] its openness and do[es] not conflict with the purposes of including land within it'
217. By its emailed request for further information (dated 7 June 2019), RMBC noted that: *'The Application Site is also located in the Green Belt. It is to be noted that neither the Appellants nor Council has assessed the impact of a 3m high acoustic*

*barrier of the suggested construction upon the openness of the Green Belt. The Council considers that such a structure is highly likely to have an adverse impact on openness and would represent inappropriate development in the Green Belt. As such, very special circumstances would need to be demonstrated to justify the harm caused. Therefore, the Council requests that the Appellants provide a statement of very special circumstances in order to justify the visual harm caused by inappropriate development in the Green Belt.'*

218. The Appellants provided no such statement at that stage. Instead, as part of their response (dated 10 June 2019) under the heading 'Green Belt', they stated that: '*Green Belt openness is not solely a visually determined matter. It is measured on the absence or presence of built development, rather than how that development is viewed or appears.*' Such statement was plainly a misapplication of Green Belt policy.
219. The question of 'openness' was (erroneously) approached by the officer in *Samuel Smith Old Brewery (Tadcaster) v North Yorkshire CC [2018] EWCA (Civ) 489*<sup>29</sup> in precisely the same way.
220. The Court of Appeal found that this was indeed a misinterpretation of (what was then) NPPF, para 90 as follows: '*The concept of "the openness of the Green Belt" is not defined in paragraph 90. Nor is it defined elsewhere in the NPPF. But I agree with Sales L.J.'s observations in Turner to the effect that the concept of "openness" as it is used in both paragraph 89 and paragraph 90 must take its meaning from the specific context in which it falls to be applied under the policies in those two paragraphs.*' and '*..... therefore, when the development under consideration is within one of the five categories in paragraph 90 and is likely to have visual effects within the Green Belt, the policy implicitly requires the decision-maker to consider how those visual effects bear on the question of whether the development would "preserve the openness of the Green Belt". Where that planning judgment is not exercised by the decision-maker, effect will not be given to the policy. This will amount to a misunderstanding of the policy, and thus its misapplication, which is a failure to have regard to a material consideration, and an error of law.*'
221. Applying the above approach, and whether considered alone or in combination with drilling rig and other substructure and equipment associated with the Proposal, RMBC considers that a 3m high acoustic barrier of 270m in length will cause harm to Green Belt openness if provided and retained in the proposed location for c.10 months, not least because of its proximity to the village, which, it is considered, will give rise to an even greater perception of impact.
222. In support of its assertion that a 3m high 270m long acoustic barrier would not cause harm to Green Belt openness, the Appellants rely upon *Europa Oil & Gas [2014] EWCA Civ 825 [CD 7.9]*. However, that reliance does not bear scrutiny given that:
- a. The *Europa Oil & Gas* case is only an authority for the following two points: i) mineral extraction includes mineral exploration; and ii) the mere fact of the

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<sup>29</sup> CD 7.17

presence of the common structural paraphernalia for mineral extraction cannot cause development to be inappropriate.<sup>30</sup>

b. It certainly does not provide authority for the proposition that proposals requiring uncommon structural paraphernalia should nevertheless be considered to be appropriate development.

c. The requirement for a 3m high, 270m long acoustic barrier is – in the experience of the Appellants’ planning witness – unique, which remains the case despite the fact that the absence of such barriers at other sites is not because they were quieter proposals or there were significantly fewer traffic movements. Instead, the points of difference are the site location, the proximity to receptors and the sensitivity of those receptors.

d. Indeed the Appellants’ planning witness agreed that a 3m high, 270m long acoustic barrier is certainly not a common feature of exploration drill sites and insofar as all exploration drill sites require certain infrastructure like a drilling rig, a number of containers, some lighting, etc, not all exploration drill sites require a 3m high, 270m long acoustic barrier.

223. As to the impact on openness of the acoustic barrier, it has been suggested that one (or maybe even two) 2m Heras fence(s) placed in a similar location to that which is now proposed for the acoustic barrier would have an equivalent comparative impact on openness when considered against a close-boarded acoustic fence. However, it was also eventually accepted that a close-boarded acoustic fence would be more harmful. There is no evidence to support the suggestion that were a Heras fence to be shrouded with opaque material, this would render it less harmful to openness

224. Furthermore, the views of RMBC’s appropriately qualified officer have been summarised in the very recent assessment of the visual and landscape impacts of the 3m high barrier as follows: *‘Whilst it can be considered that the 3m high acoustic fence is inappropriate development and will be incongruous to this rural setting having an adverse landscape and visual effect I would have to conclude that the acoustic benefits and temporary nature of the proposals should be given appropriate weight in the decision making process.’*

225. The very fact that the above response is squarely based upon the 3m high acoustic barrier being *‘inappropriate development’* can be taken as confirmation that the landscape officer considered that the acoustic barrier would harm, rather than preserve, the openness of the Green Belt.

226. Therefore, very special circumstances will have to be demonstrated in order to justify the harm caused by inappropriate development in the Green Belt, so as to reflect a proper interpretation of Green Belt policy. The correct test being whether the very special circumstances of the proposal taken overall clearly outweigh harm to the Green Belt and any other harm.

227. As to the Appellants’ evidence on the point (or lack thereof):

a. It was agreed by the Appellants’ planning witness that:

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<sup>30</sup> Europa Oil & Gas, at para 38

- i. the repeated references to any particular impact not being '*an opposing factor to the grant of planning permission*' is just another way of saying that something of itself is not a reason for refusing the application, rather than suggesting that those factors are not adverse impacts.
- ii. a number of planning issues relating to the Proposal give rise to an adverse impact, including noise, visual impacts, landscape impacts, traffic impacts, etc.
- iii. The parties might disagree as to their significance but agree that they are factors that must be weighed in the balance when assessing whether to grant permission or not.
- iv. insofar as the Appellants' planning witness carried out a planning balance assessment in his evidence, that assessment was carried out on the basis that the Proposal represents 'appropriate development' in the Green Belt.
- v. the same also applies to any landscape and visual assessments submitted with the application<sup>31</sup> which can fairly be summarised as recognising the substantial impacts of the Proposal as it was then but suggesting that their temporary nature tipped the balance towards those impacts being acceptable.

228. There was agreement between RMBC and the Appellants on NPPF policy as it relates to development in the Green Belt, which can be summarised as follows:
- a. Mineral extraction is appropriate provided that it preserves openness and does not prejudice the reasons for that land's inclusion in the Green Belt;
  - b. Inappropriate development is by definition harmful;
  - c. Inappropriate development must be justified by very special circumstances, which will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations<sup>32</sup>: see NPPF, para 144.
  - d. '*Any other harm*' is not limited to Green Belt harm.<sup>33</sup>
  - e. Substantial weight is given to any harm to the Green Belt.
229. Therefore, if RMBC's position that a 3m high acoustic barrier is required and the provision and retention of such a barrier renders the Proposal 'inappropriate development' is accepted, the Appellants' planning witness advised that something other than an ordinary planning balance would be required. Thus, he agreed that, in those circumstances, the balancing exercise that he carried out in his Proof of Evidence would be of very limited value. In fact, it would be entirely redundant because it is the wrong balancing exercise starting from the wrong premise.
230. RMBC's planning witness described the issue of whether or not very special circumstances exist as finely balanced, before providing his comments in relation to the following four very special circumstances relied upon by the Appellants in their Inquiry Note (dated 17 June 2019):

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<sup>31</sup> see – for example - Environmental Report, Chapter 5

<sup>32</sup> NPPF, para 144.

<sup>33</sup> Court of Appeal in *Redhill Aerodrome Ltd v SSCLG* [2014] EWCA Civ 1386

- a. Policy support for shale gas;
- b. Noise mitigation benefits;
- c. Comparison with Bramley Moor Lane / Harthill proposals; and
- d. The temporary presence of the acoustic barrier giving rise to 'limited harm'.

231. RMBC raised a number of concerns as to those asserted justifications as follows:

a. Policy support for shale gas. Such policy support now requires to be considered in the light of the deletion of NPPF, para 209(a) following the Talk Fracking judgment. In any event, policy support generally cannot conceivably be very special circumstances justifying an acoustic barrier when there is no credible evidence of any such barrier having been required as part and parcel of any similar proposal elsewhere. In other words, the Appellants' poor site selection and/or poor choice of access does not constitute a very special circumstance justifying Green Belt and other harm.

b. Noise mitigation benefits. Again, it would be absurd to consider mitigation that has only been required as a result of the Appellants' poor site selection and/or poor choice of access to be a very special circumstance justifying Green Belt and other harm.

c. Comparison with Bramley Moor Lane / Harthill proposals. The proper approach to Green Belt policy starts with an assessment as to whether a proposal is either inappropriate or appropriate. In this regard, it is instructive to note the concessions made by the Appellants' planning witness in cross examination:

i. He recognised that the proposals at Bramley Moor Lane and Harthill were considered on the basis that they were appropriate development. As that was the case, there was simply no need to consider very special circumstances. However, if development is inappropriate then a different balancing exercise is required to be undertaken, requiring justification by way of very special circumstances.

ii. He acknowledged that no similar mitigation was required at either Bramley Moor Lane or Harthill, which the Council suggests (and by inference the Appellants' witness agreed) was because the site selection was more appropriate and/or the access track better positioned with reference to noise sensitive receptors. However, if such mitigation had been required, and had been located as close to residential properties, Rights of Way, etc, then it is highly likely that the Council(s) would have proceeded on the basis that the proposals were inappropriate by reason of harm to openness. There is at least a possibility that the respective inspector(s) would have approached their decisions in a similar manner.

iii. Yet, the Appellants nevertheless place reliance upon those non-comparable proposals at non-comparable sites to suggest that because non-comparable exploratory drilling has been found to be appropriate elsewhere that is a very special circumstance here. That logic is entirely flawed and is based upon an absurd misapplication of policy. The fact that Harthill and Bramley Moor Lane did not require such intensive mitigation whereas the Appeal Proposal does, clearly does not equate to very special circumstances here.

d. Limited harm. The Appellants suggest that because the development is temporary, any harm is limited. However, the acoustic barrier will be required for 10-12 months of a 5 year permission and possibly longer, depending on the mitigation requirements of Stage 5. That equates to 1/5 of the total duration. Thus, the impact will be more significant than the Appellants' assertion acknowledges. Moreover, the policy weight to be given to any harm is 'substantial'.

#### *Description of development*

232. RMBC considers that the provision and retention of a 3m high 270m long acoustic barrier for 10-12 months would require planning permission in its own right and/or the description of development would need to be amended so as to include reference to it.
233. Whether this would require a fresh application is a matter for the decision maker with a view to whether the change is a substantial one (per *Wheatcroft*) and/or whether interested persons might have been prejudiced by not having had a proper opportunity to comment upon the same (per *Holborn Studios*).
234. In this regard, although RMBC has been able to gather sufficient information from the Appellants so as to canvas the views of its relevant departments, there may nonetheless still be potential third party prejudice, which is a relevant consideration.
235. Notwithstanding the conclusion reached, the fact that the issue requires to be grappled with at all means that it would be inappropriate for the Inquiry to have heard extensive evidence as to the need for such an acoustic barrier but then to hold over the decision in relation to how permission is to be granted for the same to the point of discharge of conditions. This is why, as agreed by the Appellants' planning witness, the description of development requires to be amended so as to include reference to the acoustic barrier.

#### **Comments on Appellants' closing submissions**

236. This reply is made with reference to the Appellants' Closing Submissions. It is not intended to be either a comprehensive restatement of RMBC's case or a comprehensive response to all the matters that remain in dispute between the parties. In the main, the decision taker is invited to consider RMBC's Closing Submissions, alongside the evidence submitted in support of their case and that which was heard during oral evidence.
237. This reply is limited to what is proportionate and necessary in order to correct i) inaccurate summaries of the evidence; and/or ii) inaccurate submissions made in reliance upon the same.
238. As a general point, RMBC queries the reasonableness of an approach that requires the parties to trawl through large swathes of reproduced material that has previously been submitted to the Inquiry - whether as part of proofs of evidence.
239. Moreover, the Appellants' Closing Submissions are required to be read with considerable caution given that they present virtually all of the Appellants' written evidence as incontrovertible fact to be read in a vacuum and ignorant of the oral evidence that then followed. The vast majority is bereft of substantive

comment upon the evidence actually heard by the Inquiry; still less are appropriate submissions made with reference to the numerous concessions made by the Appellants' witnesses during their oral evidence, which were set out and discussed at length in both RMBC's Closing Submissions and those filed on behalf of WAF.

### ***Inaccurate/misleading submissions***

240. At page 27, the Appellants submit that '*several important points arise*' from the wording of the PPGM, including that: '*(ii) The night time limit is not to be set or even considered relative to background levels. Instead the issue is reducing to a minimum any adverse effects without imposing unreasonable burdens on the operator.*' This is misleading. The PPGM says nothing of the sort. It does not say how the night-time limit should be established. Hence why the expert evidence of RMBC and WAF was to the effect that other guidance and standards are relevant to any consideration of the same.
241. At page 34, the Appellants submit that '*the length of any fence and the precise height of any fence can only be calculated when noise limits are set and then detailed calculations undertaken at the relevant time. The relevant time will include knowledge of the rig that has actually been selected*' (emphasis added). The emphasised assertion is simply wrong as a matter of fact and has no basis in the evidence given by any of the three noise experts. Indeed, there is no need for '*knowledge of the rig that has actually been selected*' for the purpose of determining whether an acoustic barrier is required or not because all noise experts agreed that the barrier will have little or no effect upon the impact of noise from the rig. This is a matter of simple common sense: the rig will be at a height of some 40m, an acoustic barrier at a height of no more than 3m.
242. Therefore, it would be nonsensical to await '*knowledge of the rig that has actually been selected*' before considering the issue of whether an acoustic barrier is required or not. If the Appellants' submission in this regard were correct then the entire exercise undertaken by the Appellants' own noise consultant in producing lengthy, technical, evidence as to predicted levels for the purpose of noise mitigation and management would have been a complete waste of time. For the Appellant to ignore the relevance of the same for the purpose of its Closing Submissions is inappropriate and unreasonable.
243. At page 40, the Appellants reproduces the submissions made in its Inquiry Note of 17 June 2019 under the heading of '*Prejudice and changes to application proposals*'. At the first bullet point, the Appellants submit that: '*The Council did not raise noise issues until elected Members suggested a reason for refusal including noise at Planning Board in September 2018. Due to the lack of objection from Officers, it was not necessary or possible to suggest any noise mitigation prior to that point*'.
244. Again, the assertion is plainly wrong. It clearly was '*possible*' to suggest noise mitigation '*prior to that point*'. Indeed, as acknowledged during cross-examination, the fact that the Appellants failed to suggest adequate noise mitigation at or before the Application stage was precisely why their noise witness considered that the Appellants had got things '*back to front*' with regards to mitigation. Moreover, those same failings caused him to agree that, had he been advising RMBC at the Application stage, he would have advised that the Proposal be refused on the basis of the unacceptable noise impact, thus

rendering (again, in the Appellants' witness's view) the Council's refusal of the Proposal '*perfectly proper*'. It is inappropriate for the Appellants to now make submissions without any reference to that evidence.

245. At section 12, the Appellants make '*only a few points*' on the Council's Closing Submissions. There are a number of issues that arise from those points that require comment as follows:

a. At Point 1, the Appellants allege that the scope of the Council's objection has '*widened*' in a manner that '*could properly be characterised as unreasonable conduct*'. That allegation is wholly unsupported by (indeed, it is directly contrary to) the oral evidence of the Appellants' planning witness: see Council's Closing Submission, at paras 3 and 4. For present purposes, it is sufficient to note that:

i. As their witness acknowledged (as an experienced planning professional), if he had harboured any reasonable doubt about the scope of RMBC's objection then he would have raised the point at one of the numerous opportunities he had to do so. He did not. Nor did his client.

ii. Given that the allegation is that '*the Noise Consultant for [RMBC] widened out the argument to include noise from the rig which was not within the reason for refusal*', the proper, professional, approach would have been for that allegation to have been put to RMBC's witness. A party (and advocate) is required to put its (and his/her) case to the appropriate professional witness. The Appellants advocate failed to do so. In light of the above, it is unreasonable in the extreme, and wholly contrary to good, and proper professional, practice, for that allegation to now be raised in the manner that it has been.

b. At Point 2, the Appellants allege that it is '*quite extraordinary*' and '*unreasonable*' for the Council to have relied upon BS 4142 in evidence and submissions. In reality, the allegation amounts to nothing more than an erroneous attempt to equate disagreement amongst professional witnesses with unreasonable behaviour and/or characterising RMBC's evidence and submissions distinguishing previous appeal decisions with unreasonable behaviour. It is nothing of the sort and the related submission is without merit. If it was to be properly made at all, it ought to have been explored much more fully with RMBC's witness during cross-examination. Again, it was not. Therefore, the related submission should be attributed very little, if any, weight.

c. The Appellants mistakenly characterise RMBC's evidence and submissions as to the continued relevance of the Agility Acoustics background readings.

i. First, in order for the Appellants submissions to fairly reflect the concession made by WAF's witness in relation to the '*appropriate guidance*', they would have to acknowledge that this concession related to a technical point (i.e. weather measurements) that had no material bearing on the validity or accuracy of the measurements as being representative of the period of time over which those measurements were taken. The Appellant's submissions fail to acknowledge that critical nuance and are, therefore, misleading.

ii. Second, the Council's reference to those measurements in oral evidence and submissions goes no further than to note that, since Airshed measured exactly the same, low background noise levels during the night as the lowest ones that

Agility measured, there is clearly no doubt that levels below 20dB can and do occur over certain periods of time and, if noise generating activities were to coincide with such periods, then the associated impacts may be accentuated.

d. The Appellants make various submissions as to the wording of the SoCG(N). Brief submissions were made during the Inquiry on behalf of RMBC and WAF as to the Appellants' advocate's approach in relation to that issue as it related to background and predicted levels, as well as how this translates into appropriate limits. Those submissions can be repeated shortly here: any attempt by the Appellants to backtrack from the plain wording of the Technical Statement of Common Ground, signed by its professional noise consultant, should be treated with considerable scepticism.

e. In the same paragraph the Appellants submit that '*[t]he critical issue is that there was agreement about the background levels*'. This is misleading. The SoCG(N) clearly states that '*[t]he significance of the Agility Acoustics baseline survey is not agreed and this will be the subject of evidence from all parties*'. The disagreement centred on the night-time background noise levels, something that is completely independent of any agreement about daytime and evening levels. Thus, further underlining the inappropriateness of the Appellant's submissions as to the Agility Acoustics measurements.

f. Still further down that paragraph, the Appellant submits that '*to agree background plus 10 as the appropriate limit would be contrary to the wording of the PPGM*'. Again, this is an assertion unsubstantiated by the evidence heard by the Inquiry, which can more fairly be summarised as there having been a measure of agreement between the noise experts in relation to the default position in PPGM, with further recognition that the PPGM makes provision for modifying those defaults if they would impose unreasonable burden on an operator.

g. The Appellants make a number of submissions as to the significance of Table 2 in the SoCG(N). They all fail to acknowledge that the SoCG(N) does not go so far as to agree that those agreed predicted levels are necessarily acceptable. Nor does the Appellants' submission that those agreed predicted levels '*do not justify any barrier at all let alone a 3m barrier as suggested given the clear guidance in the PPGM*' sit well with the clear evidence of their witness that a 3m high, 270m long acoustic barrier would represent '*best practice*' from a noise perspective.

h. The Appellant submits that '*it appears to be suggested that very special circumstances may not apply and [the appellants' witness] was wrong for so suggesting. If this impression is correct that this approach may also be unreasonable*'. In this regard the wording of RMBC's Closing Submissions (and the questions put to the Appellants' planning witness) was carefully – and appropriately – chosen. Not only that, but the RMBCs position as to very special circumstances has now been set out clearly on at least two previous occasions. In brief summary, RMBC acknowledges that very special circumstances may exist (hence, their description of the issue as being '*finely balanced*'). However, in looking for those very special circumstances, RMBC submits that the Inspector must go beyond the Appellant's asserted justifications because they are – in and of themselves – flawed: see RMBC's Closing Submissions, at paras 92 to 97.

i. Finally, the Appellants also submit that '*the relevant professionally qualified officials of RMBC were correct in finding that there was no objection possible in*

*relation to the noise issues. Noise should never have been promoted as a reason for refusal by the Council.'* Needless to say, that submission flies in the face of the clear evidence to the contrary given by their witness, as supported by both RMBC and WAF. In the circumstances, it is unreasonable in the extreme for the Appellants to ignore that evidence whilst trying to breathe life back into the allegation.

## **Conclusions**

246. For the above reasons, which have been explored during the course of the Inquiry, RMBC submits that this Appeal should be refused. If permission is to be granted, it should be subject to the agreed conditions discussed during the Inquiry, as well as those relating to noise and general disturbance that are appended to RMBC's closing submissions.

## **THE CASE FOR WOODSETTS AGAINST FRACKING (WAF)**

**NB** *WAF's Closing Submissions, the full text of which can be found at ID 42, have been summarised in the following paragraphs. Where WAF have covered points made by RMBC in their submissions, they note that these have not been repeated in their summary.*

247. No amount of policy support for mineral extraction can justify development that is poorly located and poorly designed. An experienced operator proposing exploratory works in a hitherto undeveloped location in the face of considerable public opposition should be scrupulous in ensuring that it had done everything to avoid any unnecessary adverse impacts on local residents and provide robust assessment of those impacts that were inevitable so as to alleviate public concerns about them. These Appellants have not done that. As a result of the Appellants' poor choices, local residents and, in particular, the most vulnerable local residents with life limiting illnesses, will be subject to adverse impacts which would not otherwise have arisen had the Appellants conducted a proper assessment of the impacts that its development would cause.
248. WAF submits that these proposals are in the wrong location and designed in the wrong way. The assessment of them by the Appellants is inadequate. This development should not be given planning permission.
249. Further, as a result of the Appellants' failure to properly understand the impacts of its own development at the design and application stage, they have been forced into proposing major changes to the proposal at appeal stage to properly mitigate its impacts. The Appellants now propose a 270m long, 3m high acoustic barrier in order to mitigate the noise impacts of its development on the most vulnerable residents in Woodsetts, those occupying Berne Square.
250. WAF submits that the appeal should be approached on the basis that a barrier would constitute a fundamental alteration and that a new application for planning permission would be necessary to incorporate it. Given that all agree that a barrier is necessary to make the development acceptable, WAF submits that the appeal must be dismissed for this reason.
251. WAF also addresses the two topics raised by the Inspector on which WAF has presented evidence:
- (1) The impact of the development on the highway network;
  - (2) The impact of the development on residential amenity (including but not limited to noise, landscape and visual matters, lighting, emissions and public rights of way)

### **Noise issues**

252. All the parties' experts agreed that the proposals were subject to a number of planning policies and guidance documents, including in particular the Noise Policy Statement for England, the relevant paragraphs of the NPPF (paragraphs 170 and 180 in particular) and Planning Practice Guidance (particularly the PPGN) and paragraphs 019 – 022 of PPGM.

253. Aside from paragraphs 021 and 022 of the PPGM, the policies and guidance noted above are qualitative in nature. That said, such qualitative guidance is key to a proper understanding of the applicable quantitative guidance.
254. In particular, the three aims of the NPSE are to:
- (i) Avoid significant adverse impacts on health and quality of life from environmental, neighbour and neighbourhood noise within the context of Government policy on sustainable development.
  - (ii) Mitigate and minimise adverse impacts on health and quality of life from environmental, neighbour and neighbourhood noise within the context of Government policy on sustainable development.
  - (iii) Where possible, contribute to the improvement of health and quality of life through the effective management and control of environmental, neighbour and neighbourhood noise within the context of Government policy on sustainable development. The three aims of the NPSE are reflected and incorporated by reference into the PPGN, which sets out that decision-makers should consider both whether significant adverse effects would occur and whether adverse effects would occur as well as whether or not a good standard of amenity can be achieved.
255. Thus, understood properly in context, any quantitative guidance that appears in paragraphs 021 and 022 of the PPGM (or elsewhere) must be understood to be underpinned by those aims. It would be wrong and a misunderstanding of the entire policy framework to focus, for example, solely on health impacts.
256. So far as baseline levels are concerned, the parties were in agreement that the representative background levels were 40dB LA90,1 hour during the day, 36d LA90, 1hour in the evening and 33dB LA90,1 hour at night. That said, the survey data collected by Agility Acoustics show that night-time noise levels can be significantly and consistently lower than the representative levels. The Agility survey revealed the mode of the background noise levels as being 20dB LA90,1 hour over a period of a week. The survey data did not comply with the requirements of BS 7445 insofar as no weather data was recorded due to equipment failure.
257. However, that does not mean that the data is of no utility or relevance. Although the weather conditions during the Agility Acoustics Survey were not necessarily typical, it remains the case that for a consistent period, background levels were significantly lower than the representative level. Indeed, even the Airshed data (which is agreed by the parties to be representative) contains examples during a four-week period where background levels were as low as those collected by Agility. Of course, if background levels were to be particularly low at any point during the development's lifetime (which is entirely possible given the very low background recordings in all the various surveys), noise impacts would be proportionately and significantly greater than during any 'representative' period.

### **Stage 1 impacts**

258. The parties agreed that the appropriate guidance was contained in Table E.1 of BS 5228:2009+A12014. That guidance makes clear that construction works pose different noise control problems compared with other types of industrial activity in part *because 'they are of temporary duration although they can cause great disturbance while they last.'* Insofar as Table E.1 sets thresholds for

potential significance, therefore, any consideration of the duration of impacts needs to take account of the fact that the threshold is itself already premised on impacts being temporary in nature.

259. Table E.1 identifies that when the ambient noise level is less than 65dB LAeq, T (as is the case here), the threshold for potentially significant effects is 65dB LAeq, T. When comparing decibel levels in residential areas, it is important to distinguish between free-field levels (i.e. measured in the gardens of noise sensitive properties) and façade levels (i.e. measured within a few metres of the dwelling façade). Whereas the threshold values in BS 5228 are expressed by reference to façade levels, the values in the SoCG(N) are expressed by reference to free-field levels (although façade levels are also given).
260. Thus, as set out in the SoCG(N), noise levels during Stage 1, even with an acoustic barrier of 3m would reach levels of 68dB LAeq, 1 hr, (façade) (i.e. 68dB LAeq, 1hour, (free-field)) for a period of a week during Stage 1 and thus exceed the 65dB LAeq, T BS 5228 threshold for five days by a margin of 3dB which all parties agreed would be a perceptible change. Without a noise barrier, noise levels would exceed the BS 5228 threshold by 7dB and would be 72dB LAeq,1hr. All parties agreed that those sorts of noise levels were high and would have adverse effects although there was dispute between them as to whether they were unacceptable.
261. Paragraph E.3.2 provides that if the threshold for potential significance is exceeded, the assessor needs to consider other project-specific factors, such as the number of receptors affected and the duration and character of the impact, to determine if there is a significant effect. All parties agree that the list of factors given in E.3.2 is not exhaustive.
262. WAF's noise witness took the view that those levels of noise would be unacceptable notwithstanding the relatively short duration and low absolute number of receptors affected in light of the specific evidence before him of noise sensitivities on the part of the residents that would be affected.<sup>34</sup>
263. The witness was definitive in his view that without an acoustic barrier, the noise impacts would be severely detrimental and even more unacceptable. The Appellants' witness chose to describe the acoustic barrier as being 'best practice' which is akin to saying that it is necessary to 'minimise' impacts, as in the policy aim. Thus, all the experts were effectively agreed that, to accord with the underlying aims of the noise policy guidance referred to above, an acoustic barrier of 3m would be necessary.
264. The Appellants argue that, with reference to paragraph 022 of PPGM and despite the view of their own noise witness, an increased noise level of up to 70dB(A) LAeq 1h (free field) would be acceptable to enable the construction of the access road. However, that threshold is not applicable to the construction of the access road because the road would not '*bring longer-term environmental benefits to the site or its environs*' which is a pre-condition of such a high level of noise within the terms of the paragraph 022. Such attempts to concoct marginal environmental

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<sup>34</sup> In particular, the letters in Appendix 1 to the proof of Richard Scholey at pages 4, 6, 10, 13 and 14, all of which reveal specific sensitivities to noise and the clearly detrimental "character" of the noise

- benefits from the access road (which were unenthusiastically taken up by one or two of his witnesses in response to his questions) do not bear scrutiny.
265. There is a further reason why the noise impacts from the Stage 1 activities are unacceptable. While the mitigation of impacts depends on the erection of a 3m acoustic barrier, there is no documentary evidence before the inquiry as to how the fence might be constructed or what the impacts of construction might be.
266. Beyond the further information and assessment requested by RMBC in relation to the length of time that the fencing would be in position and in relation to the visual impact, WAF is unsure whether the Appellants have given any consideration to the feasibility of, and likely noise and other impacts from the construction of the fence itself.
267. In particular, the Appellants' note, Detail of proposed Noise Attenuation Fence, provides:
- (a) the proposed barrier will comply with the relevant requirements of DMRB Volume 10, Section 5, extracts of which are provided at Appendix 1 to this note.
  - (b) the fence will be erected on concrete foundations, with steel structural beams, a suitable noise attenuating barrier (whether it be close boarded, double sided timber, or concrete panels) and faced with timber tongue and groove on the Woodsetts / Berne Square side.
268. The Design Manual for Roads and Bridges (DMRB) guidance makes clear that, in order to properly understand the structural requirements of any barrier, consideration must be given to prevailing wind conditions (see paras 6.1 – 6.7 of the Guidance), which in this location is a westerly wind with no obstructions but about which the Appellants have provided no information or assessment.
269. The structural requirements of the proposed barrier, which are again dealt with in detail at paragraphs 6.14 – 6.19 of the Guidance are particularly important here due to the shallow depth of the soil in the locality. Typically, the depth to bedrock in this location is no more than 0.5m and sometimes considerably less, so it is highly unlikely that the necessary foundations for the fence could be constructed without excavating the bedrock. Such excavation would itself require some kind of mechanical breaker or pneumatic drill which is of itself likely to have a significant noise impact and require additional construction vehicle movements. Again, there is no detail or assessment provided by the Appellants as to the feasibility of constructing a barrier in this location or what would be the likely constructions impacts from noise, vibration and vehicles of that work. If nothing else, the construction of the fence is likely to extend or otherwise exacerbate the impacts at stage 1, which are already unacceptable so far as RMBC and WAF are concerned.
270. The Appellants' witness agreed that for a proposal such as this, it was essential that any assessment of the noise impacts of development be subject to '*rigorous auditing*' to make sure that impacts were properly assessed. Despite being made aware of WAF's concerns, the Appellants did not take any steps to provide the Inquiry with the necessary information to the concerns raised. The best that had been done were some 'back of the envelope' calculations which were not put before the inquiry and some disjointed oral evidence. Given that the Appellants' witness had disagreed with the detailed evidence put forward in the ER and it

had, after several rounds of further information, taken the noise experts 2 days of discussions to fully identify the areas of disagreement, it is wholly unacceptable that there is no evidence before the Inquiry as to how the barrier would be constructed or whether it would be feasible to construct it in this location bearing in mind the constraints and what the impacts of construction might be.

271. While the acoustic barrier would be a necessary component of any noise mitigation strategy in order for the development to be policy compliant, there is no evidence before the Inquiry to demonstrate that it could be constructed without unacceptable adverse impact and, in the absence of any evidence, there can be no prospect that it could be so constructed. The noise impacts from stage 1 are unacceptable for this reason as well and it is a deficiency which applies equally to stage 2 daytime activities, given that the barrier is required to reduce impacts to an acceptable level for that phase as well.
272. Thus, while the stage 1 impacts might (in theory) be capable of being controlled by way of condition (i.e. which limited noise levels during stage 1 to 62dB<sub>LAeq, 1 hr, free-field</sub>), given that the evidence, as agreed between the parties, showed that the development could not comply with any such condition, the noise impacts during stage 1 are in WAF's view unacceptable.
273. Therefore, WAF's position is that noise levels from the construction of the access road could not be kept to within acceptable limits on the available evidence.
274. However, if this is not agreed, there would need to be a condition to minimise the adverse impacts. This would require noise levels to be kept to within a limit of 62dB <sub>LAeq, 1 hour, (free-field)</sub>, other than for 5 non-consecutive days when noise should be kept to within a limit of 65dB <sub>LAeq, 1 hr, (free field)</sub>. Such levels, as the agreed evidence shows, could be achieved with a 3m acoustic barrier in place. While there is no evidence to show that a barrier could be constructed within those limits, and therefore there is no way to know whether any condition could be complied with, if the Appellants' position were to be accepted (i.e. that there was some prospect of the barrier being constructed within those limits), it would be appropriate and necessary for that condition to be imposed. Nevertheless, the proposals are at odds with the BS 5228<sup>35</sup> which advocates the use of 'best practice' and the re-routing of access traffic away from noise sensitive properties. It is highly pertinent that the Appellants' witness accepted that, had he been asked, he would have recommended that the access track be located away from the residents at Berne Square.
275. Moving onto the Stage 2 daytime activities, paragraph 021 of the PPGM provides that: *'Mineral planning authorities should aim to establish a noise limit, through a planning condition, at the noise-sensitive property that does not exceed the background noise level (LA<sub>90,1h</sub>) by more than 10dB(A) during normal working hours (0700-1900). Where it will be difficult not to exceed the background level by more than 10dB(A) without imposing unreasonable burdens on the mineral operator, the limit set should be as near that level as practicable. In any event, the total noise from the operations should not exceed 55dB(A) LA<sub>eq, 1h (free field)</sub>.*'

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<sup>35</sup> CD 2.18 BS 5228-1 Noise 2009 + A1 2014, Para 7.2

276. The daytime and evening noise limits based on background +10 dB are the subject of agreement between all three noise experts in the SoCG(N).
277. Those limits are derived from paragraph 021 of the PPGM and there is no suggestion in the SoCG(N) that the noise limits were in any way in dispute or that the Appellants considered that a higher noise limit could be justified in the circumstances.
278. Indeed, the only justification for permitting a higher noise limit within the terms of paragraph 021 of the PPGM would be if achieving the limit of 10dB LAeq,1 hour (free field) above background would impose unreasonable burdens on the mineral operator. As set out in the SoCG(N), the level of 50dB LAeq,1 hour (free field) could be achieved with an acoustic barrier of 3m in height. With no barrier, or a 2m barrier, the levels would exceed 50dB LAeq,1 hour (free field). In respect of the possibility that a barrier of slightly less than 3m might achieve a level of 50dB LAeq,1 hour (free-field), the Inquiry was told that, due to the law of diminishing returns, the barrier would probably have to be very close to 3m to achieve that level.
279. The Appellants have made explicit that the erection of an acoustic barrier of 3m in height would not impose an unreasonable burden on them as the mineral operator. Given a limit of 50 dB LAeq,1 hour (free field) could be complied with without imposing an unreasonable burden on the Appellants, any noise limit set above 50dB LAeq,1 hour (free field) would be a breach of paragraph 021 of the PPGM.
280. For the reasons given above, however, the decision maker cannot be satisfied on the evidence available that an acoustic barrier would be feasible or could otherwise be constructed within the noise limits for Stage 1 set out above. Given that an acoustic barrier is necessary to achieve policy it has not been demonstrated that the Stage 2 daytime activities could be controlled to acceptable limits.
281. In order to properly apply the test in paragraph 021 of the NPPF, WAF submits that it is important to understand as a matter of principle what would and what would not constitute an unreasonable burden. It would be wrong and a misapplication of policy to find, for example, that in the absence of any evidence as to how an acoustic barrier could be constructed in this location or with what impact, such a barrier would impose an unreasonable burden. Further, insofar as the acoustic barrier might have other adverse impacts (such as visual impacts), those other impacts are not relevant to whether there would be an unreasonable burden on the mineral operator.
282. Turning to night-time noise, the parties are agreed that the applicable quantitative guidance is contained in paragraph 021 of the PPGM, which provides as follows:
283. For any operations during the period 22.00 – 07.00 noise limits should be set to reduce to a minimum any adverse impacts, without imposing unreasonable burdens on the mineral operator. In any event the noise limit should not exceed 42dB(A) LAeq, 1 hour, (free-field) at a noise sensitive property.
284. All the noise experts were agreed that, although paragraph 021 did not say so in explicit terms, the only sensible way to understand the requirement to '*reduce to a minimum any adverse impacts*' was to understand it as a requirement to

reduce noise impacts to as close to the lowest observed adverse effect level (LOAEL) as possible (i.e. without imposing unreasonable burdens on the mineral operator). The 42dB(A) LAeq, 1 hour, (free-field) level is clearly a maximum level rather than a threshold of acceptability. Indeed, such an interpretation and application of the PPGM was adopted by both Inspectors at the first and second inquiries at PNR and Roseacre Wood<sup>36</sup> and the Inspector at Bramley Moor Lane.<sup>37</sup>

285. However, the experts differed in their assessment as to what the LOAEL would be in the circumstances of these proposals. Both witnesses for the objectors agreed that the night-time LOAEL would be somewhere between 34 - 36dB LAeq,1 hour (free-field) and would in any event be below their proposed noise limit of 37 dB LAeq,1 hour (free field).
286. The Appellants' witness, on the other hand, considered, that for vulnerable groups the LOAEL would be 40 dB Lnight, outside based on annual exposure, that a short term limit of 45 dB LAeq 8 hours was likely to provide good protection in terms of health and well-being and below the SOAEL and that a 42dB LAeq,1 hour (free field) was a good standard to protect health and amenity during the drilling operations<sup>38</sup>. This approach was premised on the various WHO Guidance documents referred to (namely the Environmental Noise Guidelines for the European Region 2018 (ENG)<sup>39</sup>, the NNG 2009,<sup>40</sup> and the CNG 1999<sup>41</sup>).
287. Aside from the various methodological criticisms made by RMBC as to why it is inappropriate to attempt to translate the Lnight values used as the basis of the WHO guidance to LAeq,1 hour (free-field) values for the purpose of the PPGM (which WAF entirely endorses and adopts), WAF has a more fundamental criticism of the Appellants' reliance on the 2009 and 2018 WHO guidance as the appropriate basis of assessment.
288. As set out at section 2.2 of the 2018 Guidelines,<sup>42</sup> *'the guidelines do not explicitly consider industrial noise as an environmental noise source, affecting people living in the vicinities of industrial sites. This is mainly due to the large heterogeneity and specific features of industrial noise, and the fact that exposure to industrial noise has a very localized character in the urban population.'* At section 2.2.2, the Guidelines make clear that *'different noise sources – for example, road traffic noise and railway noise – can be characterized by different spectra, different noise level rise times of noise events, different temporal distributions of noise events and different frequency distributions of maximum levels. Because of the extensive differences in the characteristics of individual noise sources, these guidelines only consider source-specific exposure-response functions (ERFs) and, therefore, formulate only source-specific recommendations.'*
289. It would thus be wrong and a misuse of the Guidelines to derive a threshold of acceptability for night-time noise from drilling operations from the WHO recommendation for transport noise or any other source (whether in the 2009 or

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<sup>36</sup> 64 See the relevant highlighted passages in the Appendix to the proof of Mr Sproston at pages 3 – 17 and, in particular paragraphs 59 and 101 – 105 of the SoS's DL and paragraphs 12.190 – 12.192 of the IR for the first inquiry and paragraphs 84 – 86 of the SoS's DL in the second inquiry.

<sup>37</sup> CD 7.10 at paragraph 28

<sup>38</sup> Mr Fraser proof of evidence, paragraph 2.25

<sup>39</sup> CD 2.22

<sup>40</sup> CD 2.21

<sup>41</sup> CD 2.20

<sup>42</sup> CD 2.22 at p. 8

2018 version) given that the Guidelines are expressly stated to be source specific.

290. Indeed, the Appellants' witness accepted that any reliance at all on those recommendations depended on a judgment being reached as to whether night-time drilling noise was similar in character to road traffic noise, as he suggested. For the reasons given by WAF's witness, the drilling rig does not create noise of a similar character to road traffic noise and would be a completely alien and unacceptable source of noise. Unlike road traffic noise (which is often described as 'anonymous'), the noise from the drilling rig would have a distinctive character in the current noise environment. This expert judgment was reflected in the experience of residents who were already subject to night-time noise from drill rigs.
291. It was also suggested that, even if one could not rely on the 2009 or 2018 Guidelines, one could rely on the 1999 CNG which are suggested by the 2018 Guidance to apply for matters not covered by the current guidelines (such as industrial noise).<sup>43</sup> However, the 1999 CNG threshold (which suggests that noise outside bedrooms should not exceed 45dB LAeq 8 hours) is reflective of the maximum limit proposed by the PPGM. It is not reflective of the PPGM requirement to reduce adverse impacts to a minimum.
292. WAF would also refer to the findings of the Inspector at the Preston New Road (PNR) Inquiry in relation to the 1999 CNG as follows:

*12.194 The stated guideline for bedrooms with a window open at night is 45dB LAeq 8hr which converts to a free field equivalent value of 42dB LAeq 8hr which is consistent with the upper limit in para 21 of PPGM. However, the guidance states that for dwellings "Lower noise levels may be disturbing depending on the nature of the noise source" [Exec Summary pg. xiii]. It indicates that in relation to sleep disturbance, "the difference between the sound level of a noise event and background sound levels, rather than the absolute noise level, may determine the reaction probability" [Exec summary pgs ix and xii]. It recommends a still lower guideline value for noise with a large proportion of low frequency noise. It also suggests that a lower limit is to be preferred for sensitive groups such as the elderly, shift workers, people with physical and mental disorders and other individuals who have difficulty sleeping. At the Inquiry, evidence was given in relation to the age profile of the area, including elderly residents living at Foxwood Chase. (2.26, 2.43)*

*12.195 It is clear that the WHO Community Noise Guidelines themselves recognise that the nature and character of noise are fundamental components of setting appropriate noise levels. They also highlight the needs of sensitive groups. These guidelines do not prescribe the setting of a maximum night-time level of 45dB LAeq 8hr (42dB LAeq 8hr free field) in all cases. (4.61, 4.62).*

293. While the Inspector in the Bramley Moor Lane appeal appears to have accepted, to some extent, the Appellants' suggestion that some assistance could be derived from the NNG<sup>44</sup>, WAF would respectfully suggest that some caution needs to be attached to that reliance for all of the reasons given above (and in particular that

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<sup>43</sup> CD 2.22 at p. 28

<sup>44</sup> CD7.10, paragraph 29

the 45dB LAeq, 8 hour threshold in the 1999 CNG may need to be reduced to take account of the character of the noise source, the background levels and the needs of sensitive groups). Further, unlike the position here, there were no particularly sensitive noise receptors in the vicinity of the site which contrasts starkly with the circumstances of these proposals and the residents of Berne Square.

294. Having regard to all relevant matters, including the background sound environment (which was clearly taken into account by the Inspectors at PNR73<sup>45</sup>, Roseacre Wood and Bramley Moor Lane) and the low background noise levels and the sensitivity of the receptors at Berne Square, the LOAEL in this case is clearly well below the level advocated by the Appellants' witness and likely to be in the region suggested by those for RMBC and WAF (i.e. 34 – 36dB LAeq,1 hour (free-field)).
295. WAF also submits that the duration of the impact is not relevant to whether the impact would be reduced to a minimum. If the policy is properly interpreted and applied, there is nothing in the terms of paragraph 021 to suggest that the requirement to reduce impacts to a minimum should be relaxed or that a different approach should be adopted to temporary development. There was a suggestion that, if one wanted to minimise a noise impact, one would choose a drilling period of a shorter period rather than a longer period. In the circumstances of this appeal, there is nothing to suggest that the duration of the drilling period is a noise mitigation measure. Rather, the period of drilling is a parameter set as part of the proposals. The requirement to reduce the impact to a minimum thus applies to the duration of the activity as proposed.
296. WAF submits that paragraph 021 of the PPG therefore requires, for the purpose of these proposals, that noise impacts during the night should be reduced to as close to 34 - 36dB LAeq,1 hour (free field) as possible, unless reducing them to that level would impose an unreasonable burden on the mineral operator.
297. The objectors' noise witnesses both consider that a night-time noise limit of 37dB LAeq,1 hour (free field) would effectively reduce noise impacts to a minimum without imposing an unreasonable burden on the Appellants. While the limit would be above the LOAEL, they considered that such a limit would be reasonable in all the circumstances. It is important to bear in mind, however, that both were of the view that, even at that level, noise impacts were likely to have some adverse impact in any event.
298. The Appellants sought to argue that a condition which required noise levels to be kept below 37dB LAeq,1 hour (free field) would impose an unreasonable burden. Indeed, they sought to argue that any limit below 42dB LAeq,1 hour (free field) (i.e. the maximum permissible level) would impose an unreasonable burden. WAF suggests that the Appellants' position on this issue should be treated with some considerable scepticism.
299. As was accepted by their witness, the question of unreasonable burden would only arise if raised by a mineral operator and it was for the operator (rather than the Council or third parties) to establish that there would be such a burden. The Appellants accepted that the question of whether any particular burden would be 'unreasonable' could only properly be assessed by balancing the noise reduction

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<sup>45</sup> See paragraphs 12.513 of the IR in respect of the first inquiry at p. 9 of the Appendix to the Proof of Mr Sproston

benefits that might be achieved by any particular mitigation measure against the burden that would be imposed on the operator. In carrying out that balance, it will also be necessary to have due regard to the need to minimise disadvantages suffered by the residents of Berne Square by reason of their disabilities and/or old age.

300. The only evidence put forward by the Appellants to support their position on unreasonable burden was Table 3 attached to the proof of their noise witness and supplemented by some paragraphs about rig selection in the proof of their corporate witness<sup>46</sup> and eight short paragraphs in the proof of their witness on well design about rig modifications<sup>47</sup>.
301. The Appellants' noise witness accepted that, so far as his expertise was concerned, he could speak to the acoustic elements of the matters raised in his Table 3 but not to the operational, commercial or health and safety aspects of those matters. WAF submits that what is put forward by the Appellants to support their position is little more than assertion and is unsupported by the kind of evidence necessary to enable a comparative benefit/burden analysis of the kind that their planning witness accepted would be necessary for the purpose of paragraph 021 of the PPGM.
302. To take just a few examples, in the first box, labelled "General" on Table 3, it is suggested that further acoustic screening could be achieved by triple stacking containers and in his oral evidence the witness even suggested that quadruple stacking would be possible. However, despite accepting that there would be further noise reduction, he provided no evidence to the inquiry to show what level of further reduction would be achieved by such measures. He did not identify any 'burden' that such a measure might impose on the operator and the only disbenefit identified was the visual intrusion that such a barrier might cause (which he accepted was not a matter relevant to the question of unreasonable burden in any event.)
303. So far as the top drive is concerned, the witness asserted that there were a number of concerns about the feasibility and safety of enclosing the top drive but accepted that those assertions were outside his expertise, unsupported by evidence and even in conflict with the evidence of the Appellants' appointed well engineering and operations consultant who merely suggested that top drive encasement requires 'significant modifications' to rigs.<sup>48</sup> There is no suggestion that top drive encasement either compromises operation or safety of the rig. That a significant modification to the rig might be required cannot possibly be suggested of itself to give rise to an unreasonable burden. Given that the top drive would be the significant residual source of noise and accounted for half the total noise from the rig at night, the further mitigation of it would plainly be of material benefit.
304. So far as rig selection is concerned, the Appellants accepted that at least one quieter rig than the rig used in the ER (Rig 92) was available in the UK. That evidence accords with WAF's evidence which is that there are at least two quieter rigs, the Marriott HH-220 and the DrillTec VDD 370.

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<sup>46</sup> Paragraphs 3.18 – 3.34

<sup>47</sup> Paragraphs 7.1 – 7.8

<sup>48</sup> Proof of Mr Sloan at paragraph 7.4

305. While the Appellants' witness accepted that he had no expertise in the availability, or commercial realities, of rig selection, he nonetheless asserted in his Table 3 that limiting INEOS's choice of rigs would be unreasonable because a particular rig might not be available. However, the Appellants' corporate witness accepted that, even if INEOS were restricted to one particular rig, it would be reasonable to assume that the rig would be available in the lifetime of the permission and that the only potential implication might be a rental premium for the use of the rig. As such, it is evident that Table 3 contains assertions as to unreasonable burden which simply are not supported by the Appellants' own evidence before the inquiry.
306. So far as the cost implications of limiting INEOS to a particular rig were concerned, there was no evidence at all as to what might be the increase in the rental cost of the rig. It was stated that, at the current time, rig availability was good because rigs were not in demand. While it was suggested that these market conditions would lead rig owners to increase their prices (rather than reduce them), such an assertion is contrary to basic and common-sense economic principles. In any event, in the absence of any evidence at all as to what the increase in rental cost might be, there is simply no way of carrying out any assessment of whether any cost increase would be unreasonable having regard to the noise reduction benefits of a quieter rig.
307. Finally, so far as cost is concerned, the Appellants were keen to stress that they would not recover any income as a result of the exploratory works proposed and suggested that this was relevant to whether any additional cost would impose an unreasonable burden. Again, that suggestion does not bear scrutiny. The Appellants are already willing to invest very significant sums without any prospect of any return. Of course, one would assume that the Appellants hope in due course to make a profit from its investment but the fact that it can afford to risk £8-10m on this well alone tends to demonstrate that a slight increase in the rental cost of the rig would not in any way be unreasonable in the circumstances.
308. WAF submits that the evidence put forward by the Appellants to support its position on unreasonable burden is not credible for all the reasons above. It is mere assertion; it is unsupported by evidence which would enable the assertion to be critically examined and it contains no benefit/burden analysis which is necessary to allow the policy test to be applied. In fact, Table 3 contains assertions which conflict with the evidence given by the person with expertise in the topic.
309. It is public knowledge that it is possible to achieve lower noise limits because such limits were proposed by the operator at PNR and Roseacre Wood, applied by the Inspector and Secretary of State and the PNR site is now operational. To accept the Appellants position on unreasonable burden in the circumstances of these proposals would be tantamount to giving operators carte-blanche to make unsupported assertions that reductions below the permissible maximum night-time noise level would be unreasonable. That would wholly undermine the purpose of paragraph 021 of the PPGM to reduce adverse impact to a minimum and the principles underpinning that policy.
310. WAF would therefore strongly urge the imposition of a noise limit other than that put forward by the Appellants. While WAF maintains that a limit of 37dB LAeq,1 hour (free field) is required and that anything above that would be a breach of policy,

it nevertheless takes the view that every decibel counts for the residents of Berne Square, bearing in mind the need to minimise the disadvantages they suffer, and would ask for a lower limit than that proposed by the Appellants even if higher than that proposed by WAF and RMBC.

### ***The implications of the acoustic barrier***

311. As set out above, it is very clear that an acoustic barrier is necessary for the development to comply with the requirements of paragraph 021 of the NPPF. The erection of a 3m high acoustic barrier along a 270m length has a number of implications. Firstly, the erection of a barrier would clearly not preserve the openness of the Green Belt for the purpose of paragraph 146 of the NPPF.
312. While it is the case that some level of operational development for mineral extraction will be '*appropriate*', it is only those works which are 'generally or commonly found for extraction' which necessarily fall within the mineral extraction proviso.
313. An acoustic barrier for 270m alongside an access road, to mitigate noise impacts from the construction and use of the access road (and not from mineral extraction operations), is not 'generally or commonly found for extraction.' It is not akin to baffle mounds which are commonly used to mitigate noise from drilling rigs, either in its appearance or in its function.
314. WAF submits that the fence would plainly be harmful to openness given not only its structural presence but also its visual impact. The fence would not only be highly visible from the surrounding countryside and would obliterate views to the surrounding countryside from the right of way running alongside the access track and the gardens of the residents of Berne Square. A solid timber fence of that scale would obviously be incongruent in the landscape, notwithstanding the presence of other timber fencing in the countryside.
315. There was a submission that some comparison could be drawn with the proposed 'Heras' fencing alongside the access road, which would, it was suggested, of itself be harmful to openness. That comparison does not bear scrutiny. The Heras fence is almost entirely transparent and of a much lower height than the solid acoustic barrier.
316. While it is right to note that the barrier would only be temporary, it would be in situ for approximately 10 months which is a significant period of time and a significant proportion of the development. The degree of harm is such (particularly for users of the right of way and residents of Berne Square) that, irrespective of its temporary nature, it would be harmful to openness so as to fall outside the exception in paragraph 146 of the NPPF.<sup>49</sup>
317. As such, WAF submits that the development is inappropriate development in the Green Belt for the purpose of paragraph 143 of the NPPF and would thus require very special circumstances to justify it.
318. The only very special circumstances relied on by the Appellants to justify the acoustic barrier are the four bullet points set out in the Appellants' Note of 17th

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<sup>49</sup> see *Samuel Smith Old Brewery (Tadcaster) v North Yorkshire CC [2018] EWCA (Civ) 489* and *Euro Garages Ltd v SSCLG [2018] EWHC 1753 (Admin)*.

- June. Those purported very special circumstances are misconceived in a number of respects.
319. There was no evidence before the inquiry as to why the access could not be located away from Berne Square (which would, or at least might, avoid the need for a fence) and that, indeed, the Appellants did not even assert that it would not be possible to locate the access away from Berne Square. Given that it would clearly be possible to locate the access further along Dinnington Road and in the absence of any evidence or suggestion that there would be any impediments to doing so, the Appellants cannot possibly justify the erection of an acoustic barrier which would (or might not) otherwise be necessary.
320. In any event, the policy support for mineral development cannot possibly justify the erection of an acoustic barrier, the need for which has only arisen because of the choice made by the Appellants as to the site selection and the way in which the site is proposed to be developed.
321. Equally, the noise benefits of the fence do not amount to very special circumstances given that the need for the barrier to mitigate the noise impacts has only arisen due to the way in which the Appellants have chosen to develop the site.
322. The other appeal proposals referred to in the third bullet are obviously irrelevant to the issue at stake here. So far as the 4th bullet is concerned, they are not very special circumstances to justify the erection of the barrier but rather reasons why, in the view of the Appellants, the impacts of the barrier are limited. They are different things.
323. WAF submits that, in the circumstances, there are no very special circumstances to justify the fence, not only because the points raised are without merit but because it has not been demonstrated or even asserted that the proposals could not be developed so as to avoid the need for it.
324. WAF submits that this is a matter which weighs heavily against the grant of planning permission for this proposal. Further, WAF considers that the effect of granting planning permission for the barrier would amount to a fundamental alteration of the development for which planning permission was sought so as to necessitate a fresh application for planning permission.
325. In *Bernard Wheatcroft Ltd v Secretary of State for the Environment (1980) 43 P & CR 233*, the Court held that the question as to whether planning permission could be granted for something other than that which had been applied for was considered. It was found that the main criterion on which a judgment should be exercised as to whether the development is, in substance not that which was applied for, was whether the development would be so changed that to grant planning permission would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation.
326. The relevant paragraphs of the Planning Inspectorate Guidance Planning Inspectorate Procedural Guide – Planning Appeals (England) 2018, Annex M, make clear the appeal process should not be used to evolve a scheme and where, exceptionally, amendments are proposed during the appeals process, the decision taker will take account of the *Wheatcroft* principles when deciding if the proposals can be formally amended. If an appeal is made, it is important that

- what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.
327. The decision taker has to consider if the suggested amendment(s) might prejudice anyone involved in the appeal. He or she may reach the conclusion that the proposed amendment(s) should not be considered and that the appeal has to be decided on the basis of the proposal as set out in the application.
328. In *R (Holborn Studios Ltd) v Hackney London Borough Council [2017] EWHC 2823 (Admin)*, John Howell QC emphasised the importance of not conflating the substantive and procedural aspects of the Wheatcroft principle, which reinforces the point made at paragraph M.2.3 of the Appeal Guidance.
329. WAF's position is that the acoustic barrier would amount to a fundamental alteration of the proposal. Irrespective of whether it would result in a development that was inappropriate in the Green Belt (when the proposal as applied for was appropriate development) and would of itself require planning permission (both of which demonstrate the fundamental nature of the alteration), the introduction of a barrier is a change that would deprive people who should have been given the opportunity to comment on the proposal the opportunity of doing so.
330. It was accepted at the Inquiry that members of the public would have wanted to comment on the acoustic barrier had it been proposed at the application stage and that they were deprived of the opportunity of doing so at that stage. For the purpose of the *Wheatcroft* test cited above, WAF submits that this is sufficient to demonstrate that there has been a substantial alteration to the appeal proposal. The matter ends there.
331. Even if it is relevant to consider to what extent members of the public have been deprived of the opportunity of commenting on the fence taking into account the planning Inquiry, WAF maintains that there are clearly people who have been deprived of the opportunity of commenting on the fence.
332. The specific concern about noise as a result of the proximity of the access to Berne Square was raised by residents and others in relation to the first application for planning permission. So far as the evidence submitted as part of the appeal is concerned, there was no way for third parties to know that the proposals were being amended and a noise barrier was now being proposed. The fact that documents were uploaded to the Council's website does not mean that third parties would have known that there was an amendment proposed. The fact that the Inquiry was advertised would not have alerted members of the public to the alteration.
333. Neither the Appellants nor RMBC made any attempt to notify the public of the changes proposed by way of the acoustic barrier. There is no way that the decision maker can be satisfied that there has not been prejudice to third parties. It obviously needs to be borne in mind that the question of prejudice is not limited to whether the decision maker is satisfied that they have heard everything there is to be said about the acoustic barrier. The question of prejudice also depends on whether members of the public have had the opportunity to participate in the application and appeal process. Plainly they have not.

334. WAF submits that the appeal should be approached on the basis that a barrier would constitute a fundamental alteration and that a new application is necessary. Given that all agree that a barrier is necessary to make the development acceptable, WAF submits that the appeal should be dismissed for this reason.

### Highway issues

335. So far as the Development Plan (DP) is concerned, Policy SP48 of the Adopted Sites and Policies Document (June 2018) provides in relation to traffic that regard must be had to *'the effect which traffic generated by the proposal will have on road safety, property and the amenities of the people living in the vicinity of the development, or along the transportation routes likely to be used'* (criterion j) and *'the availability or provision of adequate access to a suitable highway'* (criterion k).
336. To accord with the requirements of Policy SP50, proposals for hydrocarbon exploration must ensure that *'the infrastructure and associated facilities are sited in the least sensitive location from which the target resources can be accessed, so as to avoid the environmental and ecological impact of development wherever possible'* and that *'any adverse impacts can be mitigated to an acceptable level, with safeguards to protect environmental and amenity interests put in place as necessary.'*
337. Paragraph 108 of the NPPF provides that in assessing applications for development, it should be ensured that *'safe and suitable access to the site can be achieved for all users.'* The Appellants' transport witness confirmed that if safe and suitable access to the site could not be achieved for all users, the proposals would be unacceptable. He further confirmed that whether or not an access was *'suitable'* necessarily encompassed considerations other than those merely relating to safety and that to test whether an access was *'suitable'*, it was appropriate to ask whether users of that access would be deterred from using it as a result of the additional traffic created by the development.
338. Paragraph 109 of the NPPF provides that permission should be refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
339. The Appellants suggest that the only impacts that were relevant to an assessment of the residual cumulative impacts were those movements created by developments along the route itself or otherwise those movements created by other similar developments in the general area.
340. The interpretation of paragraph 109 is wrong and this has caused a failure to take account of significant impacts on the highway network (as set out in detail below). Paragraph 109 is plainly concerned with the cumulative impact of all existing and proposed development which, whatever its nature or location, is likely to give rise to impacts on the parts of the highway network affected by the proposals, as is confirmed by paragraph 013 of the PPG on Travel Plans, Transport Assessments and Statements, which provides that *'the cumulative impact of developments within a particular area'* should be taken into account. Paragraph 109 is not merely concerned with the highway impacts of developments along a particular route or of a similar nature to the development proposals.

341. As to paragraph 110 of the NPPF, it was suggested that the requirement to give '*priority to pedestrian and cycle movements, both within the scheme and within the neighbouring area*' applied solely to pedestrian and cycle movements created by the development. That is obviously wrong and would overlook a fundamental aim of NPPF policy.

### **Development Traffic Flows**

342. The Appellants were keen to stress the importance of the Institute of Environmental Assessment (IEA) Guidelines for the Environmental Assessment of Road Traffic. It was confirmed that the fact that the development was of a temporary duration rather than a permanent duration did not alter the way that IEA Guidelines should be applied.

343. In accordance with paragraph 3.1 of the Guidelines, the impact of traffic is dependent on a wide range of factors of which volume is only one. In accordance with paragraph 3.2 of the Guidelines, in order to properly assess the impact of traffic, one would need to assess not merely the level of the flow but the time of day that the flows would be generated, the temporal variation in traffic and the design and layout of the road, amongst other things. The Appellants' witness agreed that the assessment should deal with the inherent uncertainties of the proposals and that the assessment should take into account the composition of traffic flows, particularly where a significant proportion of the flow would be HGV movements. This accorded with the view of the Inspector at the first Roseacre Wood inquiry.

344. Of greatest significance, however, was the agreement that, in accordance with paragraph 3.10 of the Guidelines, the assessment needed to take account of the times when traffic flows from the development had the greatest impact. Thus, where there would be fluctuating levels of flow and the impact of that traffic varied accordingly, the worst case scenario needed to be assessed in order for the assessment to accord with the Guidelines. The risk or downside to taking average figures is that no account is taken of the fluctuations in traffic over the period for which the average figure was produced, as the Appellants' witness agreed.

345. At paragraphs 3.4 – 3.7 of his proof of evidence, the Appellants' witness suggested that the appropriate way to assess the development traffic flows was to consider the average development traffic flows over the lifetime of the development. He confirmed explicitly in cross-examination that his assessment did not accord with the IEA Guidelines. Not only had he carried out his assessment based on average traffic flows over the lifetime of the development, rather than maximum flows but no assessment had been carried out of the impact of traffic given that there would be fluctuations of development traffic throughout the day.

346. The Appellants' justification for taking an average flow was that, although there would be times when traffic flows would be worse, there would be times when traffic flows would be better. However, if one needs to assess the worst case scenario to accord with the Guidelines, there will inevitably be times when the situation is better than the worst case. Merely because there will be times when development flows are very low cannot possibly be a justification for not assessing flows when they would be at their worst as the Guidelines require. That approach would strip the Guideline requirement to assess flows at their peak of

any sensible meaning. Indeed, the importance of considering peak flows was explicitly accepted by the Inspector at the first Roseacre Wood inquiry.

347. So far as peak days are concerned, it was suggested that their number was very limited. Indeed, the evidence in relation to stage 5, for example, was that there would only be one day on which the peak flow would be at its maximum of 56. This, although factually correct, is apt to mislead. So far as stage 5 is concerned, there would be 22 days (of a total of 36) in stage 5 when HGV flows would be 48 or above. The flows on such peak days would effectively double the HGV movements on both Dinnington Road and Worksop Road.
348. There would be a similar number of peak days for stage 1 activities. Those numbers of peak days cannot sensibly be described as minimal or dismissed as being of no material significance as the Appellants would suggest. Even before one begins to look at the temporal flow of traffic during a particular day, therefore, the doubling of HGV movements is plainly of potential significance so far as traffic impacts are concerned.
349. Bearing in mind of course that a significant proportion of HGVs would be OGV2s and a significant number over 32 tonnes (the Appellants' witness suggests that, overall, 48% of HGVs will be larger than 32 tonnes) and that the vast majority of the HGVs proposed to be used by the Appellants are over 7.5 tonnes, there will be a significant increase in the large HGVs which are of the greatest concern. The Appellants' advocate did not seek to challenge WAF's witness on these fundamental points of concern (i.e. the significant increase in large HGVs), instead choosing to concentrate his questions on the topic on a relatively inconsequential point as to the inclusion or otherwise of small service buses in the second column of his existing flow tables.
350. Further, the Appellants' witness accepted that the existing levels of OGV2 and larger articulated lorries were as shown in columns 3 and 4 of the existing flow table. These show the maximum daily flow of OGV2 vehicles to be less than 35 and articulated lorries less than 9 on Worksop Road and Dinnington Road. By any account, the additional OGV2 vehicles will be highly significant.
351. As the Construction Traffic Flow tables at Appendix A of the Aecom Review include a significant amount of Sunday working even though Sunday working is proposed to be prohibited by way of a condition, all of the HGV movements forecast for Sundays will need to be redistributed, thus inevitably pushing up the flows on other days. Unless maximum HGV flows were the subject of a condition, of course, the number of HGV movements could be even higher than those predicted. Equally, there are matters of inherent uncertainty so far as HGV movements are concerned which must, it was agreed, be taken into account. In particular, HGV movements to remove water from the site are inherently uncertain and have far exceeded estimates at other drilling sites both as a result of higher than expected levels of water flowback and higher than estimated levels of rainfall (which will need to be collected by an impermeable membrane and tankered off site).<sup>50</sup>

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<sup>50</sup> 13 CD 7.11 Table 2- 3, p. 4 suggests that existing HGV flows are 56 and 57 on Dinnington Road and Worksop Road respectively 14 CD 7.11, Appendix A 15 Mr Martin Proof, paragraph 5.47 as corrected by Mr Martin in XIC by Mr Steele QC16 Proof of Mr Kells, para 5.17 and 5.20 and Appendices 5 and 6 17 Mr Martin XX by Mr Parker 18 Mr Kells Proof, paragraph 5.25 and 7.19 19 See Condition 12D of the second IR on p. 132 20 See the proof of Mr Kells at 6.15 – 6.18 21 See the proof of Mr Kells at paragraph 6.1 onwards

352. Not only has there been no assessment of the traffic impacts on the days when development flows would be at their greatest, there has been no assessment of the effect of a concentration of HGV movements over a short period of time or at a specific time of day. Given that the Appellants' witness accepted that it is possible (if not likely) that HGV traffic would not arrive at or leave the site in an even flow throughout the day and may be convoyed, the failure to carry out any assessment other than by reference to an average flow is of real concern. Of course, convoys have both advantages and disadvantages so far as the impact of HGV movements is concerned but absent any appraisal which takes account of such movements, it is not possible to carry out any robust or reliable assessment of their effects.
353. Those concerns are exacerbated by the fact that the Appellants' witness had not taken into account any particularly sensitive times of day (such as the school run). His justification for that was that there was not a school on the route itself. That position is surprising given that, as WAF's witness explains, there are many children in the village who will need to cross the affected route to get to the primary school (which is located just off the affected route), preschool and bus stops (to travel to school) on the route. As set out below in greater detail, the disproportionate impact that this development would have on children (who, by reason of their age, have a protected characteristic) must be considered by reference to s.149 EA 2010. The decision taker must have regard to the need to minimise the disadvantages suffered by children.
354. During construction at the PRN site, peaks in flow were commonly during school pick up and commuting times. There is nothing which stops that pattern being repeated in this case on inferior roads.
355. WAF submits that a condition should be imposed which restricts development traffic during school drop off and pick up. Such a condition would clearly be necessary and reasonable, having regard to the number of movements crossing the road, the vulnerable nature of the users and the relatively limited period of restriction. Again, having regard to s.149 EA 2010, the Inspector must have regard to the need to minimise the disadvantages to children brought about by this development. Such a condition would have been imposed by both Inspectors (had permission been granted) at Roseacre Wood where similar issues arose.
356. The Appellants' own transport expert has accepted that the assessment had not been carried out in accordance with the IEA guidelines insofar as it was not based on a worst case scenario, it did not take account of peak traffic flows, did not take account of fluctuation of flows during the day and did not take account of specific flow issues such as convoying or concentrations of vehicles or sensitive times of day. WAF submits that on any view, these are fundamental flaws in the assessment of traffic impacts in this case.

### **The route**

357. The Appellants' evidence to the inquiry was simply that there were no road safety issues on the route that could be exacerbated by the proposals. It is difficult to see how such a suggestion could be made given the uncertainties, inherent safety risks and deficiencies in the route.
358. First, it was confirmed that staging areas would be used to hold development traffic but that, for reasons of commercial confidentiality, those locations would

not be disclosed. There are no obvious candidates for any such staging posts between the M1 and the site and the consequence of the Appellants' refusal to disclose them is that the decision taker is not in a position to assess whether or not they would enable safe and suitable access to the site to be provided.

359. Second, so far as the route itself is concerned, there are a number of safety risks and inherent deficiencies that are not accounted for in the transport assessment which are set in WAF's proof of evidence. It was striking that, while the witness was questioned about a number of inconsequential or otherwise irrelevant matters, he was not challenged about any of the concerns he had raised about specific locations along the route, in particular the Gateford Junction, the z-bends or within the village. No challenge was made to his evidence about speeding, about a lack of visibility along the route, about turning movements at the Gateford Junction, or about the presence of pedestrians, cyclists and equestrians at those points. No challenge was made to his criticisms of the swept path analysis or to WAF's road width measurements. The evidence in that regard was left unchallenged.
360. Starting with the A57/Gateford North junction (the Gateford Junction), as a consequence of his interpretation of paragraph 109 of the NPPF (as rehearsed above), the Appellants' witness acknowledged that he had failed to take account of the impact from two committed developments involving residential and mixed uses which would egress directly onto the junction. The Transport Assessment for the Gateford North development demonstrates that by 2022 (and with the inclusion of development traffic), the Gateford Junction would be above the 85% ratio of flow to capacity which could lead to adverse impacts as a result of congestion at a point at which there is a less than satisfactory current accident record, conflict with cyclists and narrow road widths. No account has been taken of the impact of the additional junction arm, the additional movements or the potential for congestion at this junction in the Appellants' transport assessment, WAF's witness was not challenged that those developments should be included for a proper assessment pursuant to paragraph 109 of the NPPF.
361. The junction is of particular concern because the swept path analysis shows that in order to make the turn from the A57 onto Woodsetts Lane, an HGV would have to swing first into the cycle lane and then into the opposing lane of traffic on the lane. That the junction is a concern is reinforced and exacerbated by the accident record for the island which, aside from showing that a number of accidents had occurred at the junction (both over a 5 and 20 year period) a cyclist was recently hit by a vehicle which appears to have been making the same turn as would development traffic.
362. The additional risk resulting from this inherent deficiency is exacerbated in two respects. Firstly, the current HGVs are accessing and egressing Woodsetts Lane from a variety of points, as opposed to the development traffic which would be only using the A57 to the M1. This tight turn would exacerbate the swings, particularly for articulated lorries where the rear part of the vehicle swings inwards and the cab swings outwards.
363. Secondly, any convoy would need to negotiate the junction between existing traffic or that traffic would need to be halted. Even if this went smoothly, the escort vehicle would already be on the section of Woodsetts Lane beyond the first

- sharp bend before the last HGV had negotiated the junction. The practical and safety implications of this have not been assessed.
364. Thereafter between the junction and the village, there are a number of further safety risks and inherent deficiencies in the route which have not been taken into account and/or in respect of which the Appellants' assessment is defective.
365. As demonstrated by the measurements taken by WAF, there are locations on the route where the road narrows to 5.5m. The minimum width required to enable two HGVs to pass entirely within the highway with both wing mirrors included is, at the very least, 6m.
366. While the Appellants place considerable reliance on Manual for Streets (MfS) to suggest that two HGVs can theoretically pass within a 5.5m width, it was accepted that, whether or not such a manoeuvre would be safe would depend on, among other things, the curvature of the road, the volume of traffic and the speed at which vehicles were travelling. Furthermore, MfS is, in any event, aimed predominantly at those designing for the estate road environment, as confirmed on p. 5 of MfS itself and the HS2 Rural Road Design Criteria (at paragraph A.1.3). Two HGVs passing each other at 5.5m is a manoeuvre that could clearly only be undertaken at low speed and with considerable care. If one applies the HS2 Rural Road Design Criteria, a road such as this should be at least 6.8m wide to enable two HGVs to pass safely.
367. Reliance on other Decisions where it was suggested that other Inspectors had accepted that 5.5m would provide sufficient width for HGVs is misplaced. So far as the Bramley Moor Lane decision is concerned, the Inspector there did not accept or make findings about whether two HGVs could pass at 5.5m; the Inspector's only finding was that two HGVs could pass slowly at 6m. The position taken by the Inspector at the first Roseacre Wood inquiry was that it was only at a width of 6m that it would be theoretically possible for two HGVs to pass each other.
368. So far as Harthill is concerned, the circumstances there were entirely different and the intensive management of development traffic proposed there would not be possible here. Here, two HGVs would be passing each other at speed, whereas at Harthill the roads are effectively single track roads so as to necessitate passing places and an extremely involved management plan. The fact that the passing places need only be 5.5m does not show that 5.5m would be sufficient on a fast-moving two-way road such as is the case with this proposal.
369. The Appellants chose not to provide any evidence of road widths to the Inquiry and did not dispute the road measurements provided by WAF. Those measurements show that the locations where the road narrowed to 5.5m include a shallow bend just after the Gateford Junction where visibility is poor and a series of z-bends adjacent to a caravan storage facility and where a public right of way crosses the route. It is plainly not safe for two HGVs to pass within a 5.5m width at those locations given the curvature in the road, the speed that the vehicles are travelling and the lack of visibility to oncoming traffic.
370. Indeed, the only available evidence before the inquiry demonstrates that those locations are not safe for two HGVs to pass each other. The swept path analysis produced by the Appellants only demonstrates that an HGV is theoretically able to pass a car. It does not demonstrate that two HGVs are able to pass.

Photographic evidence produced by WAF that shows that vehicles do cross the centre line, particularly in wet weather when there is pooling of water at the side of the road. Along with the curvature of the road and the absence of intervisibility between opposing traffic flows, the narrow width gives rise to a significant risk of collision.

371. As the accident records show, accidents have occurred predominantly at the precise locations about which one would be concerned, namely the Gateford Junction, the approach to Owday Lane and the z-bend curves referred to above. On any view and as a matter of common sense, the accident records corroborate the safety risk concerns and inherent deficiencies in the route insofar as they show that accidents have occurred predominantly at the precise locations where one would fear they might.
372. The addition of such significant numbers of OGV2 vehicles, and the specific movements they are making, even without the introduction of conveying, create new risks on a route which is already subject to accidents, including a fatality and a serious accident in the last five years, means a cautious approach to future risk must be taken.
373. The Appellants have confirmed that if there were to be an issue with the route (for example if the A57 were closed and traffic diverted through Woodsetts), development traffic would be abandoned. The Appellants have not assessed the suitability of other routes and there is no evidence to show that any other route would achieve safe or suitable access. As such, WAF submits that a condition would, if permission were granted, be both necessary and reasonable to prevent development traffic from accessing the site other than by way of the preferred route. WAF submits that the condition must explicitly restrict development traffic to a particular route to be effective and that such a condition would not be unreasonable given that any diversion that would need to be made by local delivery (e.g. from Anston or Dinnington) would be very minor indeed.

### ***Vulnerable Users***

374. The impact of development traffic on vulnerable users is of particular concern given the likely significant increases in large HGV traffic in particular periods and at particular times of day. The Appellant's witness dismissed any concerns about the impact on pedestrians (whether as a result of severance or fear and intimidation) on the basis that development traffic flows were low.
375. Again, and consistent with his approach to development traffic flows, he accepted that he had failed to carry out his assessment in accordance with the IEA Guidelines in important respects.
376. In particular, the IEA Guidelines suggest that the factors that need to be given attention in determining whether severance is likely to be an important issue include not only traffic flows and road widths but the composition of traffic, the availability of crossing facilities and the number of pedestrian movements that were likely to cross the affected route.
377. The Appellants' witness confirmed that he had not considered the fact that there were no crossing facilities to cross the route in the village of Woodsetts and that he had not carried out any pedestrian surveys to determine the number of pedestrian movements likely to cross the affected route. Nor had he taken into

account the narrow pavement widths in Woodsetts for the purpose of his assessment. WAF's evidence that a pedestrian survey would be necessary to properly assess the impact was left unchallenged.

378. Again, so far as pedestrian fear and intimidation are concerned, the Guidelines make clear that the impact from development traffic will be dependent not only on the volume of traffic but also its HGV composition, its proximity to people or the lack of protection caused by such factors as narrow pavement width.
379. Of particular concern, given the vulnerability of many residents close to the site was the failure to assess *'areas exposed to higher than average levels of school children, the elderly or other vulnerable groups'* or whether *'the movements of hazardous loads will heighten people's perception of fear and intimidation'* which the IEA Guidance explicitly says require particular attention. The impact of traffic in this respect would clearly be disproportionate on those with protected characteristics (i.e. children, the elderly and the disabled) so as to require the decision taker to have due regard to those impacts for the purpose of s.149 EA 2010. The safety of the public is paramount when it comes to highway safety.<sup>51</sup>
380. The failure to conduct a proper assessment in accordance with the IEA Guidelines is a significant flaw. Absent a pedestrian survey, it is impossible to know how many people use the narrow pavements in and around the village and in what way. There are likely to be significant numbers of pedestrians crossing the route to get to school and other amenities. Even the Appellants have identified particular areas of concern around the village in the ER.<sup>52</sup>
381. There are a considerable number of safety and suitability issues including car-parking (which has knock-on impacts, not only for the available width of carriageway but also for incursions onto the narrow pavement opposite), bus stops along the route, speeding, a significant number of amenities, narrow pavements with incursions from highway infrastructure which brings pedestrians into very close proximity with road traffic (particularly if a wheelchair or buggy meets a pedestrian). The pavements in the vicinity of Berne Square are a particular concern, whether it is people accessing the bus stop close to the site entrance or the Doctor's Surgery or going from Berne Square and the surroundings into town.
382. But it is not merely within the village of Woodsetts that concerns exist. There are a number of bus stops outside the village (for example at Owday Lane) which necessitate pedestrians walking alongside the route and not on footways as well as crossing the carriageway. Several public rights of way meet the route, including the crossing point at the z-bends. Other third parties have pointed out that there are a significant number of pedestrians along the route outside the village at other points. While any deficiencies in the route are obviously pre-existing, the addition of significant numbers of HGV movements for particular periods and at particular times of day will exacerbate the risks at those locations and no account has been taken of those risks in the Appellants' assessment.
383. There are also clear and inherent dangers on the route for horse riders and cyclists in light of the curvature of the route, the narrow road widths and

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<sup>51</sup> PoE Mr Keels App.1 Para 12.860

<sup>52</sup> CD10.4 Figure3-2

relatively high speeds of vehicles travelling along the route. The Appellants' witness confirms that '*potential conflict already exists on the local highway network.*' His sole response appears to be that development traffic flows will be low and thus no assessment of the impact of the development on those potential conflicts needed to be carried out.

384. It is important to note in this regard that, in accordance with paragraph 109 of the NPPF, if the impact on vulnerable users on the road network is already 'severe' by reason of the existing conditions, the residual cumulative impacts of any development which adds movements to that network will necessarily be severe unless improvements are made to the network and/or those impacts mitigated in some other way. There will be significant increases in HGV flows during specific periods and at specific times of day. Absent a proper assessment of the development which takes account of those increases on the potential conflicts which already exist, it simply cannot be said that safe and suitable access to the development can be achieved.

### **The access**

385. At the proof stage, the Appellants provided a revised access arrangement for the development. They did not explain why the access arrangements had been changed but it is reasonable to assume that the changes were made, at least in part, to alleviate WAF's concern about the original proposals for the access.
386. WAF set out their concerns about the new access arrangements in an 'Additional Note on Access to the Site.' The Appellants' response to the concerns raised in that appears to be that there will be a banksman located at the divergence between the access track and the existing right of way to manage vehicle movements in and out of the site.
387. It was confirmed that if existing users of the right of way were to try to exit the site at the time that a convoy of HGVs was using the shared section of the access, it would be for the banksman to manage traffic appropriately and there would be no priority for current users of the access. This results in the potential for delays and disruption (which may be significant if for some reason development traffic is not moved on from the shared section of track immediately) for users of the current access.
388. There has been no assessment of any additional lighting measures that would be necessary as a result of the new access arrangements. Furthermore, the addition of the acoustic fence would give rise to potential conflicts between residential users of the current track and agricultural vehicles using the access. At present, for example, when leaving her property Mrs Timons has a clear line of sight along the length of the access track and across the field from the holly bush. This allows her to identify when other vehicles, usually agricultural vehicles and lorries, are entering the track from Dinnington Road. This awareness is essential so that, if an agricultural vehicle is coming towards her to access the farm, she can wait on the track before the farm entrance (thus allowing the agricultural vehicle to turn in) and does not commit to the single-track section of the access with no passing places (which will remain as it exists today) at a time when she would meet the vehicle head-on at a point when they could not pass each other. Vehicles leaving the farm benefit from the same open view.

389. The addition of an acoustic fence, however high, will remove this line of sight in both directions, creating the hazard of vehicles confronting each other on the single-track section of the track. The addition of a banksman at the security gates will do nothing to alleviate this risk, as he/she will be unable to see users approaching or be in a position to warn them to stop, until they are committed beyond the farm entrance. The Appellants have not given any thought to the possibility of such conflicts. Such potential for conflict demonstrates that the access arrangements are neither safe nor suitable.

### **Mitigation**

390. The mitigation proposed is limited. The TMP, in as much as it is available, does not provide any detail of how it will operate, although it appears to rely heavily on driver training, the limitations of which were identified by the Inspector at the first Roseacre Wood Inquiry.

391. No physical mitigation is proposed, WAF's view that mitigation that would cost-effectively address the areas of concern could not be envisaged was not challenged, nor were additional mitigation measures proposed. If WAF is correct in their analysis of the problems, it must follow that those concerns will remain unmitigated in terms of the requirement of NPPF Paragraph 108 (c).

### **Summary**

392. For all these reasons, WAF submits that safe and suitable access to the site cannot be achieved, that there would be an unacceptable impact on highway safety and that the residual cumulative impacts of the development would be severe. The mitigation proposed, such as it is, would not cost-effectively mitigate those impacts. The proposals would therefore conflict with paragraphs SP48 and SP50 of the Adopted Sites and Policies Document and paragraphs 108 - 110 of the NPPF.

### **Residential amenity**

393. In considering the impact on residential amenity, WAF submits that particular regard will need to be paid to the impact of the proposals on the residents of Berne Square, in the light of policy CS27 of the Core Strategy and policy SP52 of the Sites and Policies Document, given the close proximity of their homes to the development and in light of their particular characteristics, health needs and vulnerabilities.

394. Under the Council's prioritised application letting policy, most residents of the bungalows on Berne Square fall into Bands 1 and 2, largely because they have complex health needs or medical conditions. Many of the residents of Berne Square are elderly and a large proportion suffer from a range of complex health issues. Some of the residents spoke movingly at the Inquiry.

395. Sections 149(1) and (2) of the Equality Act 2010 provide that a person who exercises public functions must, in the exercise of those functions, 'have due regard to the need to— (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.'

396. Sub-sections (3) and (4) provide: '(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to— (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it ... (4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.'
397. Sub-section (7) provides that the protected characteristics include age and disability. The residents of Berne Square plainly have protected characteristics for the purpose of the 2010 Act. Thus, in deciding whether or not to grant planning permission, it will be necessary to have due regard to the need, pursuant to s.149 EA 2010, to remove and minimise disadvantages related to the age and/or disability of the residents of Berne Square and the need to take steps to meet those needs where they are different from the needs of persons who do not have a disability or are not elderly.
398. The Appellants evidence on the topic did not inspire confidence in those who heard it. Their witness insisted that, so long as the decision taker applied the relevant policies of the DP, they would thereby discharge their duties pursuant to s.149 of the Equality Act 2010 because the policies of the DP had been subject to an Equality Impact Assessment (EqIA) which established that they would not have a disproportionate impact on protected groups.
399. Aside from the fact that the policies of the DP relevant to these proposals had not all in fact been addressed in the EqIA, the fact that the policies themselves were compliant with s.149 2010 does not mean that s.149 EA 2010 does not need to be considered in their application to a specific project.
400. Indeed, precisely the same point was argued and rejected in *R(Buckley) v Bath and North East Somerset Council [2019] EWHC 1574 (Admin)*, which concerned a challenge to a decision to grant planning permission for the demolition of housing. As was made clear in *Buckley* at paragraph 33, only if the purpose of a particular planning policy was to address precisely the kind of equality considerations that might arise in relation to a particular proposed development would the application of that policy enable the duties under s.149 EA 2010 to be discharged.
401. The general position of the Appellants appears to be that no specific consideration needs to be given to the residents of Berne Square over and above people living elsewhere as set out in a letter to RMBC dated 21 August 2018.<sup>53</sup>
402. That is simply wrong and betrays a fundamental misunderstanding of the legal duties to which the decision taker is subject. The adverse effects (whatever their degree) of the development which affect the residents of Berne Square by reason of their disability or old age will inevitably be proportionately greater and more harmful than they would be for a person who was not elderly or suffered from a disability. It is a sad fact that for some of the residents of Berne Square, the 5-

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<sup>53</sup> CD 4.6

year duration of the development could represent a large proportion, or even the remainder of their lives. In these circumstances, the development, for them, could effectively be permanent.

403. Examples of the way in which the residents of Berne Square would be disproportionately affected by the proposed development are set out in the letters from residents that appear at Appendix 1 of the proof of evidence of WAF's witness on residential amenity, in the evidence given to the Inquiry by residents and throughout the expert evidence of topic experts. It will be necessary to have regard to all the ways in which the development would disproportionately affect the residents of Berne Square by reason of any disability or age for the s.149 duty to be discharged.
404. At the most general level, however, it is clear that the development would not remove or minimise the disadvantages suffered by residents of Berne Square by reason of their disability, it would exacerbate them. The development would not meet the needs of the residents of Berne Square so far as they suffer from disabilities or are elderly. The development would make those needs harder to meet. Those are matters to which 'due regard' must be had in deciding whether or not to grant planning permission in order for the s.149 duty to be discharged.
405. However, the duty goes further than that. Even if, contrary to WAF's position, the decision was taken to grant planning permission, the decision taker would need to have due regard to the need to remove and minimise those impacts which would disproportionately affect the residents of Berne Square and to have due regard to the need to meet those needs, so far as possible, through mitigation. Thus, in the case of noise, disturbance and other impacts on amenity, the decision taker will need to consider whether, to discharge their duties pursuant to s.149 EA 2010, a greater level of mitigation is necessary than would be the case if those affected by the development did not have any protected characteristics under the Act.
406. Finally, WAF submits that, to discharge their duties under s.149 EA 2010, the decision taker will need to consider whether the proposals could be delivered in such a way that some or all of those disproportionate impacts could have been avoided, had the scheme been designed differently.
407. WAF submits that the access could have been sited away from the residents of Berne Square. The Appellants have not put forward any evidence to show that the relocation of the access would not be possible. The decision taker will need to have regard to this failure in giving due regard to the matters raised by s.149 EA 2010.

### ***Other amenity issues***

408. Aside from the impact as a result of noise, there will be other impacts on residential amenity including from light, emissions and dust. The Appellants accept that there would be substantial effects on landscape character in the vicinity of the site and on visual amenity for the duration of the drilling periods (and moderate impacts for the remainder of the development). The acoustic barrier would obliterate views (whether it was 3m high or slightly less than that) from the rear gardens of the residents of Berne Square and the public right of way. The constant coming and going of vehicles would itself be disruptive to those residents in the vicinity of the access track.

409. So far as the public rights of way in the vicinity of the development are concerned, they are well-used, as the WAF surveys show<sup>54</sup> and of significant importance to local residents, particularly those residents of Berne Square.
410. Views from the village to the west are uninterrupted and devoid of any visible development whatsoever. Views to the east from PROW AB23 are panoramic and distant and are free from industrial buildings in a near setting. It is the very fact that there are open fields, ancient woodland and hedgerows without the intrusion of industrial or habitation development, that provide the opportunity for peaceful enjoyment of the rights of way. That would all change with the introduction of this development and the purpose of those rights of way would be significantly and detrimentally impacted.
411. The 'holly bush', which sits at the top of the field, is a very important focal feature for many of the local community. There is a memorial bench beside it, to which many will walk to sit and enjoy the view and quiet. For many of the elderly and mobility impaired residents of Berne Square and elsewhere, this short walk enables them to get fresh air. Again, that would all change with the introduction of this development.
412. Again, so far as those public rights of way are the main or only means of access to the countryside for some residents of Berne Square by reason of their disability or age, the impact on them would be disproportionate by comparison to others.
413. The Appellants suggest that alternative routes are available. However, they are not really alternatives at all. They are either predominantly on pavements through the village or else they are restrictive (and require stiles to be crossed) which limits their use by elderly and disabled residents. They will not provide an alternative for any residents of Berne Square or the village who have mobility or other issues.
414. WAF submits that, by reason of the above, the proposals would be in conflict with Policy CS27 of the Core Strategy and Policy SP52 of the Sites and Policies Document. The proposals would have a disproportionate impact on those with protected characteristics for the purpose of s.149 EA 2010. At least some of those impacts could have been avoided had the Appellants not located the access immediately adjacent to the homes of vulnerable residents with life limiting illnesses.

### **Planning balance and conclusions**

415. As set out just above, WAF submits that permission should be refused on the basis that all parties agree that an acoustic barrier is required. WAF submits that the decision taker cannot take it into account (as it would amount to a fundamental alteration of the proposals) so as to necessitate a fresh application for planning permission in any event.
416. However, even as proposed, WAF submits that permission for the development should be refused.

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<sup>54</sup> Appendix 8 to the Proof of Mr Scholey

417. WAF accepts that the Government considers it essential that there is a sufficient supply of minerals to provide (inter alia) the energy that the country needs and that minerals can only be worked where they are sourced. WAF recognises that the Government attaches importance to the benefits of onshore oil and gas development, including their exploration (although the deletion of paragraph 209(a) from the NPPF must inevitably mean that less weight should be accorded to this benefit than would otherwise be the case).
418. However, whatever are the benefits of this proposal, it does not mean that any application for mineral development should be approved whatever its impacts. Mineral development must be located in the right place. This is the wrong place. Aside from anything else, the fact that the Appellant has even had to contemplate the erection of a 270m noise barrier to properly mitigate the noise impacts of the proposal demonstrates that to be the case.
419. WAF submits that the adverse impacts of the proposal far outweigh the benefits, such as they are, of the development proposed. That the nature and severity of those adverse impacts are the result of choices made by the Appellant in this case and only underlines why permission should be refused.

### **Conditions**

420. WAF do not dispute most of the conditions as submitted by RMBC and therefore rely on those. Conditions shown below are where there remain matters of dispute between the parties and are WAF's suggestions for either additional or alternative conditions to those previously suggested.
421. Condition 5: WAF considers that the requirement for the Traffic Management Plan (TMP) to be 'based on a route' is insufficiently precise. In the interests of highway safety for all users of the highway and site access, WAF considers that the condition should be explicit in restricting development traffic to a particular route either in addition to Condition 5 or by way of a replacement to the final sentence: *All HGVs shall access and egress the site using the preferred route between Gateford Island and the site entrance on Dinnington Road. No other route shall be used.*
422. WAF considers that the following condition (which contains two parts) should be additionally imposed (and/or either part imposed), as discussed during the conditions session:

*There shall be no more than 60 two-way HGV movements in total to and from the exploration site (30 in/30 out) on any day for the duration of the development.*

*Access and egress of the exploration site by HGVs shall only be permitted between the following hours:*

*During March –September (inclusive)*

*07.00 and 19.00 Monday to Friday but, during school term time at Woodsetts Primary School, only between 09:30 to 15:00 and between 16.00 and 19:00, 07.00 to 13.00 on Saturdays, not at any time on Sundays or on Bank or Public Holidays, except in the case of an Operational Emergency.*

*During October – February (inclusive)*

*08:00 to 16:00 Monday to Friday but, during school term time at Woodsetts Primary School, only between 09:30 to 15:00, 08.00 to 13.00 on Saturdays, not at any time on Sundays or on Bank or Public Holidays, except in the case of an Operational Emergency.*

*The hours set out above are the 'HGV Hours'.*

423. In relation to condition 16, WAF supports the Council on requiring this condition. Regardless of the fact that the Appellant is not seeking to remove vegetation from the appeal site, the Appellant should be seeking to achieve a biodiversity net gain in line with the principles of the NPPF and, therefore, should look at ways to implement this scheme as appropriate in the immediate vicinity.
424. In relation to Condition 21, WAF considers that the words (as underlined in bold below) should be added to the condition for clarity:

*Restoration and aftercare*

*Notwithstanding condition 2, no restoration shall take place until a detailed Restoration Plan has, before 6 months of the end of the 5 year temporary permission, been submitted to and approved by the local planning authority. The plan shall substantially accord with the measures set out in the Proposal document, submitted to the local planning authority on 13 June 2018 and drawing no. P304-S21-PA-09 and shall include details of any noise mitigation measures and a timetable for implementation. The approved plan shall thereafter be implemented in full. The local planning authority shall be notified within 7 days of completion of the restoration works, to allow the local planning authority to issue written confirmation that the restoration has been completed satisfactorily.*

425. WAF fully supports the Council in its view in relation to conditions 23 and 24.
426. Condition 25 would be replaced by the condition suggested by WAF above but if that is not included then Condition 25 should remain.
427. WAF consider that the following words (as underlined in bold below) should be added to Condition 26:

*No development shall take place until a Noise **and Vibration** Management Plan has been submitted to, and approved in writing by, the local planning authority. The plan shall include:*

*i) data from the relevant manufacturers' noise tests for each item of significant noise emitting plant to be used on site, to establish whether noise emissions **will comply** with the noise limits set out in condition X;*

*ii) if significant noise-emitting plant is not likely to be compliant, details of what mitigation would be introduced and timescales for mitigation implementation;*

*iii) Where any **noise** mitigation under ii) above involves a noise barrier, that barrier shall be retained for the duration of works during Stage 1 (site construction) and Stage 2 (Drilling, coring, PTT and Suspension) and acoustic integrity shall be maintained at all times. Any barrier will be dismantled no later than 7 days after the completion of the works within Stage 2.*

*iv) procedures for addressing any **noise and vibration** complaints received;*

v) details of a Noise **and Vibration** Monitoring Scheme, including a mechanism to address any non-compliance with the noise limits set out in condition X;

vi) management responsibilities including operator training, compliance response, **complaint** investigation, and routine environmental noise **and vibration** monitoring and reporting; and vii) methods to determine whether noise is free from tonal, intermittent or impulsive characteristics, the incorporation of these methods in the Noise **and Vibration** Monitoring Scheme and a mechanism for the setting of any necessary noise limits and weighting together with any mitigation, including approval in writing by the local planning authority. Development shall be carried out in accordance with the approved **Noise and Vibration Management Plan**.

428. WAF considers that it is important to consider noise levels at stage 5 associated with demobilisation of the site which are likely to be the same or similar to Stage 1 and therefore unacceptable unless a condition is imposed. Condition 27 should therefore apply to Stages 1 and 5.

429. In dealing with Stages 2 – 4, the condition should explicitly deal with the period 19.00 – 22.00, as set out below (and underlined in bold).

*Condition 27*

*Stages 1 and 5*

*The level of noise during the construction and restoration of the site access road when these operations are adjacent to the dwellings in Berne Square, as measured at any noise sensitive receptor, shall not exceed, 70dB LAeq 1hr (free-field) between 07.00 and 19.00hrs. This noise limit shall apply for no more than 5 non-consecutive days.*

*Thereafter the level of noise during the construction set-up and restoration activities associated with the site access track hereby permitted shall not exceed, 62 dB LAeq 1hr (free field) between 07.00 and 19.00hrs.*

*Thereafter noise associated with the formation and restoration of the site compound shall not exceed 55 dB LAeq 1hr (free-field) between 07.00 and 19.00hrs.*

*Stages 2 - 4 Noise attributable to vehicle movements on the site access track shall not exceed 50 dB LAeq 1hr (free-field), as measured at any noise sensitive receptor, between 07.00 and 19.00hrs.*

*Noise attributable to operations during Stages 2 – 4 inclusive including noise on the site access track shall not exceed: 50 dB LAeq 1 hour (free-field) at any noise sensitive receptor between 07:00 and 19.00 hours; 46 dB LAeq 1 hour (free-field) as measured at any noise sensitive receptor between **19:00 and 22:00hrs**; and 37 dB LAeq 1 hour (free-field) between 22:00 and 07:00hrs.*

*All **noise** measurements expressed in the above condition shall be at a height of 1.2m – 1.5m above ground level.*

*The noise **and vibration** monitoring locations will be agreed with the Council. If it is not possible to monitor **noise** at the most **exposed sensitive receptor** location(s), the Applicant will agree comparative noise limits at the actual noise monitoring locations with the Council.*

*Where any breach of the above noise level, **or vibration level limits as agreed in the Noise Management Plan occurs**, all operations on site shall cease until such time that the applicant can demonstrate that the levels can be achieved. The local planning authority shall be notified in writing of the dates of completion of the construction set-up activities, within 7 days of that date, and the commencement of restoration activities, at least 7 days prior to that date.*

### **Response to the Appellants' Closing Submissions**

430. These submissions respond very briefly to the Appellant's Closing Submission in order to point out where that submission is either misleading or factually incorrect.
431. It is suggested that five transport consultants were 'employed' by RMBC and came to the same professional opinion as RMBC. That is wrong. The consultants were not employed by RMBC and it is unclear what material they were provided with by RMBC. Further, it is not known how many consultants agreed with RMBC (whether it was just one or more than one) and how many simply did not have capacity at short notice.
432. The Appellant suggests that the intervisibility issues raised by Mrs Timons would be resolved by a banksman. That is wrong and misunderstands the nature of the issue raised by Mrs Timons.
433. It is suggested that WAF accepted that a wooden fence is not *per se* incongruous in the Green Belt. The answer to the question on this point was qualified to make clear that a wooden fence of the length/height/appearance etc proposed would be incongruous in the Green Belt.
434. It is suggested that the Cambridge Dictionary definition of 'concoct' includes an element of deception. The Oxford English Dictionary defines 'concoct' as 'invent' (with no suggestion that there is any element of intended deception) and that is the sense in which the word 'concoct' was used in the submission. No suggestion was being made that the Appellants' advocate was being deceptive. WAF maintains that the purported environmental benefits of the creation of an access track were simply devised by the advocate as opposed to being based on the evidence of any witness.
435. It is suggested that the position taken in the Closing Submission so far as the noise impacts of the construction of the access track were concerned was at odds with the opinion of WAF's witness on noise is factually incorrect the nature of the evidence given has simply been misunderstood. Whether or not the witness accepted that the question of noise was 'capable' of resolution by way of condition during Stage 1 (which is not in any event accepted), as the Appellants' witness acknowledged in his oral evidence, WAF's witness was of the view that, in order for the noise impacts of the access track to be kept to within acceptable levels, the noise limit would need to be set at a lower level than could be achieved on the available evidence. The submissions made in the closing submission are maintained.

### **WAF COMMENTS ON WMS ISSUED ON 4 NOVEMBER 2019**

436. While the moratorium imposed by the WMS relates to Hydraulic Fracture Consents, the WMS states that 'the shale gas industry should take the

Government's position into account when considering new developments.' WAF submits that the WMS is relevant to the appeal proposals on this basis.

437. Further and in any event, the Appellant's application and appeal documentation makes clear that the purpose of the appeal proposals is stated to be as follows:

*This Proposal is part of INEOS's phased approach to evaluate the hydrocarbon prospectivity of its Petroleum Exploration and Development Licences (PEDLs) in England. The aim of the well would be to test geological properties of the underlying strata (in particular the Bowland Shale formation equivalent within the East Midlands basins) and to assess their potential to produce gas. On completion, the well would be temporarily suspended with the potential to use as a "listening well" to monitor subsurface impacts arising from other operations in the region, should such operations receive the relevant planning consent and environmental permits.'*

438. The Appellants' geology witness provides further clarity at paragraph 6.6 of his proof of evidence as to the objective of PTT as applied for in this appeal. *'The objective is to observe the progressive pressure increase and then reduction over the following days in order to determine the natural formation pressure and the ability of fluids to flow through it.'*
439. Thereby, the primary purpose of the appeal proposal is simply to investigate the potential for extracting natural gas from shale gas in the area. However, unless the moratorium on hydraulic fracturing is lifted, there can be no benefit to ascertaining the extent or nature of the shale gas reserves in the area or the potential for its extraction, because such extraction cannot take place in accordance with Government policy.
440. Further, insofar as a secondary purpose of the appeal proposals is to operate as a *'listening well'* for nearby operations. The Appellants describe the use of the well during *'future developments'* as a listening well. It sets out how geophones will be lowered into the wellbore to be used to monitor adjacent wells *'during monitoring of hydraulic fracturing'*. However, hydraulic fracturing cannot now take place in accordance with the moratorium and there can therefore be no potential benefit to the development as a listening well.
441. In particular, the moratorium has taken immediate effect which requires that any hydraulic fracturing operation at the Appellant's nearby site at Harthill (approved at appeal APP/P4415/W/17/3190843) must cease immediately, therefore, there will be nothing for the Appellant to *'listen to'* at the appeal site at Woodsetts.
442. It should be noted for completeness that nowhere in the application or appeal documents has the Appellant suggested that the appeal proposals might be used to gather evidence to address *'the concerns around the prediction and management of induced seismicity'* as referred to in the WMS. There can therefore be no suggestion that these proposals would have the benefit of providing evidence in relation to the issues raised in the WMS.
443. Given that the object of the appeal proposals is to explore the nature and extent of natural gas reserves in the area which cannot, unless the moratorium on hydraulic fracturing is lifted, be extracted, there can be no benefit to the approval of planning permission at this location.

444. As such and as a result of the new WMS, the planning balance has fundamentally shifted. No weight can be attributed to the benefit of exploring shale gas reserves in this area at this time as it is unknown whether hydraulic fracturing will be permitted in the future. The 'great weight' placed on the support for hydraulic fracturing in the previous WMS's to which is referred to in the Appellants' closing submissions (paragraph 8.22, page 57) has been profoundly superseded. As such, the adverse impacts of the appeal proposals must outweigh the benefits, given that there is no benefit to the appeal proposals at this time.

## **INTERESTED PERSONS WHO APPEARED AT THE INQUIRY**

### ***Deborah Gibson***

445. Ms Gibson is a resident of Harthill where there has been a recent application for shale gas exploration. She produced a statement<sup>55</sup> which she read to the Inquiry. She has a background in mental health work and is concerned about the effects of the development on the welfare of vulnerable residents of Berne Square. She considers that the stress of living close to an exploratory well site would be bad for their mental and physical health.

### ***Mrs Helen Clarke***

446. Mrs Clarke is a resident of Berne Square and produced a statement<sup>56</sup> which she read to the Inquiry. She has health issues and is concerned about noise and disturbance, pollution and the possible dangers of using the public right of way if there are lorries on the access track. She considers the erection of a 3m high barrier would have a potential effect on her view and light reaching her property.

### ***Dawn Norman***

447. Mrs Norman produced a statement<sup>57</sup> which she read to the Inquiry. She has health issues and is concerned about noise and disturbance and traffic issues. She considers the proposal to be detrimental to the countryside and would severely damage her quality of life.

### ***Mr Gareth Jones***

448. Mr Jones is a local resident and produced a statement<sup>58</sup> that he read to the Inquiry. He sets out why he considers that the Appellants have failed to keep people living in Woodsetts informed about their proposals and considers that this means that they are not likely to treat the people, environment, roads and the village with respect in the future.

### ***Ms Linda Sharpley***

449. Ms Sharpley is a local resident and produced a statement<sup>59</sup> which she read to the Inquiry. Amongst other things, she is particularly concerned about the potential industrialisation of the village and the effect of increased traffic on local roads.

### ***Mr Nigel Butler***

450. Mr Butler is a local resident and produced a statement<sup>60</sup> which he read to the Inquiry. He is also concerned about the impact that construction traffic would have as it comes through the village. He notes that many cyclists, riders and pedestrians use the local roads and attaches a memorandum from the Senior Highway Development Control Officer, who he considers should resign.

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<sup>55</sup> ID 7

<sup>56</sup> ID 5

<sup>57</sup> ID 14

<sup>58</sup> ID 54

<sup>59</sup> ID 9

<sup>60</sup> ID 8

**Mr Adrian Knight**

451. Mr Knight is a local resident and produced a statement<sup>61</sup> which he read to the Inquiry. He challenges the legality of the agreement reached between the Appellants and the landowner.

**Mr Kevan Windle**

452. Mr Windle is a local resident and produced a statement<sup>62</sup> which he read to the Inquiry. He has health issues and is concerned about the proximity of the access track to his home, fearing that the noise and fumes from passing lorries will affect his well-being. He also objects to the loss of countryside and to the prospect of the acoustic fence, which he considers will create an overbearing sense of enclosure to his property.

**Mrs Christine Timons**

453. Mrs Timons is a local resident and produced a statement<sup>63</sup> that she read to the Inquiry. She lives at the top of the existing access track and confirmed that this is the only vehicular access to her home. Among other things, she is particularly concerned about having to share this route with the HGVs that would be accessing the appeal site and that the proposed acoustic fence would restrict her views along it, leading to potential conflicts between the site traffic and her family's vehicles.

**Ms Diane Carrigan**

454. Ms Carrigan is a local resident and produced a statement<sup>64</sup> that she read to the Inquiry. She has a right of way over the access track from Dinnington Road and is concerned that sharing this with the appeal site traffic will cause problems for her and those who need to access her land. She fears that a gate may be installed that would prevent this and notes that the Appellants have not contacted her to discuss her use of the track.

**Ms Susan Wood**

455. Ms Wood is a local resident and produced a statement<sup>65</sup> that she read to the Inquiry. She is concerned that the local footpaths and bridle path which are an integral part of village life would be adversely affected by the development. The paths are widely used and she considers that they are essential for the physical and mental wellbeing of the residents.

**Mr Christopher Harrison**

456. Mr Harrison is a local resident who lives in Berne Square. He has health problems and is concerned about the noise and dust from lorries using the access track and additional traffic in the village. He fears that the acoustic fence would spoil his views across open countryside and of walkers on the track. His garden borders the field and he enjoys getting out into it but is concerned that if the proposal went ahead it would attract protesters. He considers that operations such as this should be sited away from the village.

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<sup>61</sup> ID 3

<sup>62</sup> ID 19

<sup>63</sup> ID 18

<sup>64</sup> ID16

<sup>65</sup> ID17

**Mr Mike Hill**

457. Mr Hill is a local resident and made a presentation to the Inquiry and provided notes of his appendices to accompany them<sup>66</sup>. He asked the Appellants to provide answers to a number of questions<sup>67</sup> and queried the calculations on traffic numbers and movements. He considers that the information provided to residents was misleading and drew attention to examples that he submitted supported his case. He also considers that the Appellants have not complied with recommendations on site selection and have not submitted correct or full details of the construction process.

**Dr Tim Thornton**

458. Dr Thornton produced a statement<sup>68</sup> that he read to the Inquiry. He sets out his concerns over the potential health risks to the residents of Berne Square. He begins with general concerns that vulnerable groups of people are more likely to be affected by adverse impacts of development. He goes on to note that at other well construction and drilling operation sites, regulatory measures have failed to be enforced. He records that at a similar site there were breaches of the noise management plan. He also expresses concerns about potential gas loss to the environment at the end of the process.

459. He sets out details of the health problems faced by some of the Berne Square residents and considers that their needs warrant particular consideration whatever the predictions on noise, traffic and emissions might be.

**Cllr Jenny Whysall**

460. Ms Whysall is a local councillor and produced a statement<sup>69</sup> that she read to the Inquiry. She is particularly concerned about the impact of the development on the residents of Berne Square.

**Cllr. Clive Jepson**

461. Cllr. Jepson is the local councillor for Anston and Woodsetts Ward. He produced a statement and appendices<sup>70</sup> that he read to the Inquiry. He is concerned about traffic levels and pedestrian safety issues.

**Dr Andy Tickell**

462. Dr Tickell spoke on behalf of the Campaign to Protect Rural England (CPRE) and produced a note<sup>71</sup> and statement that he read to the Inquiry.<sup>72</sup> He referred to the judgement in *Stephenson v SoSHCLG [2019]EWHC 519 (Admin)*<sup>73</sup> and submitted that this case, through the removal of the in-principle support for unconventional onshore oil and gas exploration in the Framework, has established that proper consideration should be given to the counter arguments against shale gas exploration in terms of energy security and role of gas in

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<sup>66</sup> ID10 & ID 22

<sup>67</sup> ID 20

<sup>68</sup> ID35

<sup>69</sup> ID36

<sup>70</sup> ID23

<sup>71</sup> ID6

<sup>72</sup> ID33

<sup>73</sup> CD7-14

helping to meet climate change targets. He refers to the UK Committee on Climate Change's 'Net Zero' report which does not give any support to UK shale gas as a solution.

463. He draws attention to the CRPE's initial letter of objection on relating to the negative impacts on landscape, tranquillity and local amenity. He concludes that, in the opinion of CPRE, the significant local impacts outweigh the limited national benefits in the planning balance.

***Cllr. Monica Carrol***

464. Cllr. Carol is a local Parish Councillor and produced a statement with appendices<sup>74</sup> that she read to the Inquiry. She is concerned that the residents of Berne Square would have their Human Rights compromised by the development and that not enough consideration has been given to their well-being. She considers that residents regard the proposal with fear and alarm.
465. She is also of the view that traffic management and road safety matters have not been covered sufficiently and reports that the Parish Council is already concerned about the traffic situation at the junction of Grange Road and Worksop Road. She fears that the development would lead to further traffic congestion.

***Ms Fiona Hopkinson***

466. Ms Hopkinson is a local resident and she produced a presentation which she read to the Inquiry. She keeps horses at stables close to the appeal site and regularly uses the bridle path adjacent to the access way. She is concerned that the noise from drilling and additional traffic would upset the animals and make the bridleway unsafe to use. She is also concerned that the area would be a target for protesters against the operation and this would compromise the security of her property.

***Ms Sarah Wilkinson***

467. Ms Wilkinson spoke on behalf of the Woodsetts Pre-school and produced a statement<sup>75</sup> that she read to the Inquiry. The Pre-school facility is located close to Dinnington Road's busiest junction and caters for children from 2 years old to school age and uses outdoor as well as indoor space all year round, who, she noted are more vulnerable to polluted air than adults. Their lungs are not fully developed and could be easily damaged by air pollution, particularly as they are at the level of car exhaust emissions. They could develop also asthma through exposure to polluted air. She submits that even small changes can have a big impact on this vulnerable group.

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<sup>74</sup> ID37

<sup>75</sup> ID34

## WRITTEN REPRESENTATIONS

468. There are many individual written representations<sup>76</sup> submitted in response to the original application and to the appeal. The vast majority are from local residents, a number of whom spoke at the Inquiry. Their objections have, in the main, been summarised by those who spoke and in the case presented by WAF, who raised issues in addition to those covered by RMBC. However, other objections submitted in writing by specific interest groups are summarised below.

### **Sheffield Climate Alliance (SCA)**

469. SCA raise objections over the weight given to WMSs which they consider misrepresent the evidence they purport to represent and query their credibility and hence the weight they should be afforded in deciding the appeal.
470. They note that both WMSs include similar comments about the contribution shale gas can make to meeting legally binding greenhouse gas emissions targets. The second WMS states *'every scenario proposed by the Committee on Climate Change [CCC] setting out how the UK could meet its legally-binding 2050 emissions reduction target includes demand for natural gas.'* Whilst true, they state that this is not the specific advice the CCC has given on the likely climate impacts of UK shale gas. (It refers to gas from any source). That specific advice is not mentioned in either WMS 1 or 2 but is still valid.
471. SCA considers that there is a very high risk that *'Exploitation of shale gas on a significant scale is not compatible with UK carbon budgets'*. Since SCA's first submission, the CCC has published its 2018 Progress Report, which clearly describes the large 'policy gap between emissions reductions required from the whole UK economy and those likely to be achieved through existing policy.
472. WMS 1 states that *'studies have shown that the carbon footprint of electricity from UK shale gas would be likely to be significantly less than unabated coal and also lower than imported Liquefied Natural Gas'*. SCA submit that ultimately reducing total global emissions is the crucial test. Developing UK shale gas would increase the global supply of fossil fuels, a factor that would most likely have a greater effect on global emissions than those the appellant describes. If global efforts to mitigate climate change are to succeed, the great majority of global fossil fuel resources need to be left in the ground. A degree of international cooperation must ensure therefore that only the most suitable resources are developed. There will be a range of factors influencing which these will be, the dominant one being price.
473. It should be noted that unconventional fuels such as shale gas are expensive to extract, owing to the energy required. Other factors are likely to be local environmental conditions, less likely to be favourable in a crowded country such as the UK, proximity to the point of use and finally, the willingness of Governments to show leadership on climate change action by deliberately desisting from exploiting their own resources. Former UK climate envoy to the UN, John Ashton says: *'You can be in favour of fixing the climate. Or you can be in favour of exploiting shale gas. But you can't be in favour of both at the same time. It would soon become impossible if, just as we sought to persuade others*

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<sup>76</sup> About 150

*to leave their conventional reserves in the ground, we went hell for leather to extract unconventional gas and oil from under our own feet. We would no longer be listened to.'*

474. WMS2 itself states *'Our current energy mix...provides us with stable and secure supplies. However, we believe that it is right to utilise our domestic gas resources to the maximum extent...'*. SCA agrees with the first sentence, which is backed up by BEIS' October 2017 report *'Gas Security of Supply'*. However, they do not agree with the second sentence for what they consider are compelling reasons relating to the need to reduce global emissions, as described above.

475. They submit the well would form part of an early stage of a shale gas industry in the UK that cannot realistically be compatible with UK greenhouse gas emission targets and that there would be a range of impacts on the local environment, which cannot be justified. The well proposed could only have any beneficial purpose if it becomes a component of a much wider shale gas industry. Therefore, in order for it to be justified, the industry as a whole would need to have a realistic prospect of bringing net benefits to the locality or nation as a whole.

476. The Framework calls for planning policy to help secure *'radical reductions in greenhouse gas emissions'* [para 93]. In order to achieve this, Planning Authorities should ensure new developments could fit within an over-arching plan to meet national Carbon Budgets. The CCC's report *'The compatibility of UK onshore petroleum with meeting the UK's carbon budgets'* [July 2016] found *'the exploitation of shale gas on a significant scale is not compatible with UK carbon budgets, or the 2050 commitment to reduce emissions by at least 80%, unless three tests are satisfied:*

*'1. Emissions must be strictly limited during shale gas development, production and well decommissioning. This requires tight regulation, close monitoring of emissions, and rapid action to address methane leaks.*

*2. Overall gas consumption must remain in line with UK carbon budgets. The production of UK shale gas must displace imports, rather than increase gas consumption.*

*3. Emissions from shale gas production must be accommodated within UK carbon budgets. Emissions from shale exploitation will need to be offset by emissions reductions in other areas of the economy to ensure UK carbon budgets are met.*

*At this early stage, it is not possible to know whether the tests will be met easily or not. The Committee will closely monitor steps taken by Government and other relevant agencies to satisfy these tests. The Committee will report publicly on performance against the tests. In addition, the Committee will assess the Government's forthcoming Emissions Reduction Plan – which will set out how the Government will meet the fourth and fifth carbon budgets – in light of the possible development of a UK shale gas industry.'*

477. Since this report's publication, referring to the points above SCA note:

1. The Government has not made any changes to regulations to ensure this test is met.

2. and 3. Whilst it would be extremely difficult to ever either prove or disprove whether test 2 has been met, the Government has since published its "Clean Growth Strategy". This Strategy fails to meet the Fourth and Fifth Carbon Budgets (covering the period up till 2032), by its own admission. Thus, emissions cuts not identified in the Strategy will, at some stage, have to be identified. In view of the difficulties in all sectors of the economy in contributing to this, abandoning the shale gas industry would be one of the most straightforward measures that could be taken towards achieving Carbon Budgets. We recognise that the Government has asserted that new technologies will enable the "emissions gap" to be closed, enabling those Budgets to be met. However, the legal requirement of the Climate Change Act is for firm plans - thus relying on existing technology, whose likely impacts can be reliably modelled, as opposed to speculation.

478. The application is for an exploratory core well. Based on the above comments, SCA do not believe there is a strategic need for it. A wide range of local impacts, as follows, further reinforce SCA's view that the project cannot be justified. These are stated to be:

1. Excessive additional traffic for this single stage of shale gas exploration, including large numbers of HGV movements through the centre of Woodsetts .
2. There will be noise and light emanating from the site 24 hours a day, during times of peak operation. Noise levels will exceed the 70dB planning guidance limit for normal minerals operations.

#### ***Firbeck Parish Council (FBC)***

479. Firbeck Parish Council is dismayed to see this attempt by Ineos to overthrow two decisions by RMBC denying permission for an exploratory well at Woodsetts. They say their comments are not made from any particular viewpoint on the rights or wrongs of fracking but from the point of view that the proposals at this site are entirely unacceptable due to the proximity of the site to the village of Woodsetts, the visual and environmental impact on the locality, the impact of increased traffic on the village and all road users which include residents of Firbeck. They are not convinced that the evidence submitted by the applicant suggests otherwise.

480. In the covering letter to the second application the applicant suggested: a. That the Planning Board members were wrong headed in refusing permission on the first application saying the decision was not evidence-based; and b. That given the success of the appeal at the Harthill site, RMBC were more likely than not to fail on an appeal against refusal of the revised application at Woodsetts and would therefore incur unnecessary costs in the appeal process.

481. FBC strongly encouraged the Planning Board to consider the application on its merits. A planning board is entitled to reach its own decisions by attaching different weight to various planning criteria which are relevant to the application; they are not bound to take the advice of planning officers. FBC urged the committee to give more weight to the negative impact of the use of the site as opposed to the impact during construction of the site. The negative impact on the amenity of neighbours and the community of the site during use is, they understand, a valid planning consideration.

482. Their concerns centre around:

1. *Visual and landscape*

a. Change of character from a rural area to an industrial area b. Large scale industrialisation of the green belt c. The visual impact of a 60-metre high drilling rig d. The closeness of the proposed site to Woodsetts village e. The visual impact of day-to-day operations on a site at a higher elevation to the village.

2. *Transport*

a. Significant increase in HGV movements in this area, at times up to 60 additional movements per day. b. Concerns about pedestrian safety, especially children. FBC are not convinced that a traffic management system would adequately address these concerns. Particular concerns regarding the suitability of the road from the Gateford Roundabout to Woodsetts remain. c. Pollution from HGV and other vehicles at a time when air pollution is a big concern. d. Access to the site from the A57, through either Woodsetts village or North Anston, remains a concern, with particular concern about the winding road from the Gateford roundabout to the edge of Woodsetts, there being no route which avoids these residential centres. The reports from highway officers give quite a narrow assessment of the capacity of the highway system and the physical suitability of the roads from a road safety point of view (which they concede will require a suitable traffic management system to ensure). FBC do not see any assessment of the impact of traffic during the use of the site from the point of view of noise and disturbance.

3. *Environmental*

a. The risk of escape of pollutants from site and/or in the course of removing waste products and foul water from site by road transport. b. Risk from faults in natural geology. c. Effect on wildlife in the area. d. Operation of an industrial facility 24 hours a day, 7 days a week producing noise and light pollution. Night time operations would have a particularly negative effect on residents and the community. The site is located in a predominantly residential area where occupiers could reasonably expect a level of amenity concurrent with the property. The use of the property as a test drilling/listening site for fracking operations introduces a diverse element that by reason of the use is likely to result in noise, disturbance and nuisance to the detriment of neighbours' residential amenity. e. The access point to the site is immediately adjacent to the envelope of the village's residential property and the particular negative impact on the nearby properties does not appear to have been addressed. f. The introduction of large-scale HGV traffic with its associated noise and vibration impact on the adjacent residential properties. g. The close proximity of the drilling rig to an ancient woodland.

## INSPECTOR'S CONCLUSIONS

**NB** The numbers in square brackets in this section are references to previous paragraphs in this Report from which these conclusions are drawn.

### Noise

483. Noise can be a subjective issue, as evidenced by the inability of the 3 different consultants to reach a definitive view on noise limits. This is largely due to the different guidance that they consider to be relevant to particular aspects of the case. However, specific guidance on noise levels in relation to mineral working is given in PPGM and, despite references by all parties to other sources to support their cases, I recommend that PPGM should be the main reference point for guidance for this particular case.
484. This guidance is regularly updated and must therefore be considered to reflect the Government's up-to-date thinking on the topic and is most relevant to planning policy. Nevertheless, the advice in the relevant British Standards and the guidance published by the WHO also have a bearing on the matter and provide useful references. They have therefore also been taken into account in my conclusions on this matter. **[154-155, 161]**
485. Although widely quoted in preceding paragraphs, it is worth setting out the relevant sections from PPGM again for the avoidance of any doubt. They state:

*Mineral planning authorities should aim to establish a noise limit, through a planning condition, at the noise-sensitive property that does not exceed the background noise level (LA<sub>90,1h</sub>) by more than 10dB(A) during normal working hours (0700-1900). Where it will be difficult not to exceed the background level by more than 10dB(A) without imposing unreasonable burdens on the mineral operator, the limit set should be as near that level as practicable. In any event, the total noise from the operations should not exceed 55dB(A) LA<sub>eq, 1h</sub> (free field). For operations during the evening (1900-2200) the noise limits should not exceed the background noise level (LA<sub>90,1h</sub>) by more than 10dB(A) and should not exceed 55dB(A) LA<sub>eq, 1h</sub> (free field). For any operations during the period 22.00 – 07.00 noise limits should be set to reduce to a minimum any adverse impacts, without imposing unreasonable burdens on the mineral operator. In any event the noise limit should not exceed 42dB(A) LA<sub>eq,1h</sub> (free field) at a noise sensitive property.*

*Increased temporary daytime noise limits of up to 70dB(A) LA<sub>eq 1h</sub> (free field) for periods of up to 8 weeks in a year at specified noise-sensitive properties should be considered to facilitate essential site preparation and restoration work and construction of baffle mounds where it is clear that this will bring longer-term environmental benefits to the site or its environs.*

*Where work is likely to take longer than 8 weeks, a lower limit over a longer period should be considered. In some wholly exceptional cases, where there is no viable alternative, a higher limit for a very limited period may be appropriate in order to attain the environmental benefits. Within this framework, the 70 dB(A) LA<sub>eq 1h</sub> (free field) limit referred to above should be regarded as the normal maximum.*

486. The SoCG(N) was produced after 2 full days of consultation between the noise experts for the parties. It agrees the predicted noise levels from the proposed development and these are set out in the document. The results show that, during stage 1 (the construction of the access road), the threshold of significance, (as referred to in BS 5228) which is derived from the Appellants' acoustic consultants' calculations and is also found in the ER, and which is agreed to be 62dB LAeq 1Hr (free field), would only be exceeded for the residents of Berne Square during week 1. The predicted level there is up to 69dB LAeq, 1hr, (free field). Whether this would be acceptable nonetheless and, if not, how this could be mitigated, is not agreed.
487. During stage 2 (the drilling operations), the agreed background noise levels are set out in the SOCG(N) and it is also accepted that the drilling operations alone would not cause the daytime and evening noise limits to be exceeded. The cumulative noise levels of the noise from the rig and from the traffic (subject to provisos on the surfacing of the track) are also agreed as are the impacts of acoustic barriers of different heights on these levels.
488. The Appellants have commented that the noise limits that are agreed in the SoCG(N) are '*based on background+10dB*' and that this is a statement of fact but does not suggest that they are the appropriate limits. They say that to agree this would be contrary to the advice in the PPGM. In response, the objectors note that the Appellants' witness agreed that the daytime noise level must not exceed 50 dB LAeq, 1hr, (free field) and that this was agreed in the SoCG(N). However, the Appellants submit that a limit of 55dB LAeq, 1hr, (free field) for the daytime/evening operations during this phase would be sufficient to prevent any adverse impacts, which would negate the need for the acoustic barrier.
489. The acceptable night time noise level resulting from the drilling operation during stage 2 is not agreed. It is agreed that the predicted level would be 39dB LAeq, 1hr, (free field) and that the façade noise levels (at the buildings) would be equivalent to the free field level plus 3dB (i.e. 42dB). The Appellants submit that a limit of 42dB LAeq, 1hr, (free field) as referred to in the PPGM would be wholly reasonable and in line with the recommendations of the WHO Guidelines. They consider that any lower level would impose an '*unreasonable burden*' on them. As can be seen from the above, predicted levels of the proposal would meet this limit without any necessary mitigation.
490. However, the objectors consider that the relevant guidance within the PPGM, which contains the requirement to reduce any adverse impacts to a minimum, means the noise levels should ideally be limited to the lowest observed adverse effect level (LOAEL) and that the suggested level of 42dB LAeq, 1hr, (free field) is well above that level. The Appellants' witness stated that the LOAEL was 40dB LAeq, 1hr, (free field) but RMBC's witness considered that the LOAEL was likely to be 35dB LAeq 1hr (free field) and RMBC and WAF ask for a limit of 37dB LAeq, 1hr, (free field) to be imposed.
491. For reasons which will be explained in subsequent paragraphs, I turn first to the noise levels for stage 2. I consider that a straightforward reading of the SoCG(N) indicates that the agreed noise limits should be background + 10dB as recommended in the PPGM. **[245(d) & (e)]** The SoCG(N) demonstrates that the predicted daytime levels and evening levels would be above those limits if there were to be no mitigation. However, the Appellants refer to other sites where

their suggested level of 55dB LAeq, 1hr, (free field) has been used. If there were to be a 3m high acoustic barrier, it is agreed that the limit of 50 dB LSeq 1 hr free field would not be exceeded.

492. The objectors draw attention to the NPSE<sup>77</sup> and the Framework which include in their aims the requirement to minimise any adverse effects on the quality of life from noise. They also consider that to comply with 'best practice' the construction traffic should be routed away from residential properties.
493. Although it has been suggested that the failure to explain why the access route to the site could not be located away from the Berne Square properties is a serious flaw in the application, there is no proposal for an alternative route submitted for this appeal, which must therefore be judged as applied for. I note however, that the siting of the track does appear to conflict with the requirement in section 7.2 of BS 5228 that access traffic should be routed away from noise sensitive premises. **[319]**
494. In any event, I consider that it is essential that the protection of the living conditions of the residents of Berne Square is given high priority. The residents have a variety of mental and physical health conditions and are living in those properties, close to the doctor's surgery and in what would normally be quiet rural surroundings, for those reasons. Some of the residents spoke movingly to the Inquiry about their problems and the fears they have about disruption to their way of life for the duration of the five years for which the planning permission is sought. **[445, 446, 452, 456]**
495. The Appellants have accepted that the provision of the proposed fence would not amount to an 'unreasonable burden' for them. The limit of 55 dB LAeq, 1hr, (free field) referred to in PPGM is an upper limit and where a lower limit can be achieved through mitigation, without imposing an unreasonable burden, I consider that this should be the default position. Consequently, I find that the fence should be provided because it would minimise the impact of the noise of the development for the Berne Square residents. Therefore, I recommend that the stage 2 limit should be set at 50 dB LSeq 1 hr free field, which would require the erection of a 3m high acoustic barrier. **[193, 279, 281]**
496. In respect of the daytime stage 1 limits, the Appellants draw attention to the PPGM which notes that higher noise levels of up to 70dB LAeq, 1hr, (free field) can be considered for up to 8 weeks to facilitate essential preparation works. They therefore submit that this limit should be accepted for stage 1 and note that it would not be breached. If this position were to be agreed, there would be no need for an acoustic barrier for stage 1.
497. There is no doubt that daytime noise levels for all of stage 1 could be regulated to comply with the relevant guidance, whichever that is deemed to be, through the erection of an acoustic fence. However, as noted above, the Appellants do not accept that such a barrier would necessarily be required. RMBC and WAF submit that such a fence would require the grant of planning permission and consider that this should not be granted through this appeal. This will be considered in subsequent paragraphs.

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<sup>77</sup> CD2.17

498. However, given that I have found that there is a need for the fence for stage 2, I consider it should also be provided for stage 1 as it would have quantifiable benefits for the Berne Square residents, particularly given their vulnerability and their sensitivity to unwanted noise.
499. WAF also submit that there is no justification for relaxing the limit for stage 1, considering that the 70dB LAeq, 1hr, (free field) limit can only be accepted where there would be '*longer term environmental benefits to the site or its environs*'. The Appellants consider that the upgrading of the existing track, which is also used by farm traffic, would give a quieter surface which would equate to such a benefit.
500. However, I am not persuaded that the improvement to the access way, whilst no doubt of benefit, would be sufficient to justify a higher limit for all of stage 1 than 62dB LAeq, 1hr, (free field), which is the agreed threshold of significance as set out in paragraph 486 above. None of the residents complained of noise from current activities on the track; in fact, most commented on how they valued the quiet location of their properties. **[447, 452, 463]** It is also the case that the lower limit could be achieved without imposing an unreasonable burden on the operator.
501. Although the actual timescales of the active periods of the works would not cover the whole five-year period, there is nothing in the suggested conditions or otherwise at present to control exactly how long each stage of the process would take place or to prevent any overrun. In the light of these factors, and given that the noisiest phases of the work (Stages 1, 2 and 5,) would be likely to last for about 10 months in total, I would recommend that special consideration is given to the need to ensure the quietest possible noise environment for these residents.
502. In the suggested conditions, RMBC have suggested a limit of 70dB for up to 5 non-consecutive days during Stage 1. They have not, however, explained why the 5 day limit has been suggested but I am assuming that this is to allow for the occasional day when levels might need to be higher and this is why the days are required to be '*non-consecutive*'.
503. I consider that the noise limit for the construction of the access track phase in week 1 of Stage 1 should not be raised to 70dB LAeq, 1hr, (free field). This means that there would be a need for a 3m high acoustic barrier for stage 1 as demonstrated in Table 2 of the SoCG(N) as well as for stage 2.
504. If the Secretary of State agrees with these findings, consideration must then be given to whether planning permission for that acoustic barrier, which would be in the form of a close-boarded fence, is:
- (i) needed and if so:
  - (ii) if it can be granted through this appeal and, if so:  
whether the fence would be inappropriate in Green Belt terms and, if so, whether very special circumstances exist that are sufficient to outweigh the harm caused by this, and any other identified harm, and would thereby justify the grant of permission.
505. It should be noted that a 2m high fence would be permitted development in any event. **[95]** Nevertheless, this does not apply to a 3m high fence and a fence of

such a length would not be a normal part of an exploratory well site as it is required to protect residents from undue noise during the construction and use of the access road and is not related to the exploratory drilling operation. **[313]** It would also, in my view, be a distinct change from the 'Heras' fencing to each side of the access track that is already included on the application plans. **[315]** That type of fencing has a semi-permanent appearance with an open mesh construction and would have a very different impact on openness from a close boarded alternative. Given the foregoing findings and the site location within the Green Belt, I recommend that planning permission for it would be required. **[311]**

506. On whether consideration of the fence and its inclusion in the application would cause prejudice, the people most affected by it (i.e. the residents of Berne Square, the residents who use the access track and those walking on the PROW) have all made representations on its impact. Although details of the proposal were only finalised through the course of the Inquiry, I am satisfied that the impact of it has been fully debated. RMBC has been able to get responses from its statutory consultees and whilst there may be persons who were not able to attend the Inquiry, the matter of the fence was raised at the outset and there was the opportunity for comment throughout the 2 weeks of the Inquiry duration. **[89-92]**
507. In any planning application it may be the case that not everyone with an interest in the matter was approached but, given the interest in the proceedings from local residents and their representative group and the widespread media coverage of the case, it is very unlikely that there would be any further significant points that could be raised on the matter that were not put to the Inquiry. Therefore, I recommend that the matter can fairly be determined through this appeal.
508. Turning to whether the fence would represent inappropriate development within the Green Belt, this would depend on whether it could be considered to be for '*mineral extraction*' which the Framework confirms would not be inappropriate provided it '*preserves openness*'. The fence would, of course, be related visually to the well site but, as noted previously, it would not, in my view, be a normal part of an application for mineral extraction. It would, through its solid nature and considerable height and length have an impact on openness, particularly as it would be an isolated man-made object in an otherwise open section of agricultural land.
509. It has been submitted that, because the fence would be removed at the expiry of the permission, there would be no enduring harm to openness. **[76]** In addition, I note that the agreed conditions include one that would require the fence to be dismantled after the completion of stages 1 and 2, which are limited to a period of 10 months. The barrier might need to be replaced for the duration of de-commissioning in stage 5 but again this is covered by the condition.
510. Consequently, in the worst-case scenario, the fence would be in place for up to 12 months which, in my view, is not an excessive length of time for the identified harm to openness to exist. I therefore conclude that, whilst the fence would be inappropriate development which is inherently harmful in the Green Belt, the loss of openness would be limited and the harm caused would subsequently be slight.

511. Nevertheless, I have found some harm, and consideration must therefore be given to whether there are any material considerations in favour of the proposal that are sufficient to amount to the very special circumstances that would be needed to clearly outweigh the harm and justify the grant of planning permission.
512. Although a 2m high fence could be erected without the need to apply for a specific planning permission, no such fence would be needed or be likely to be erected in this location without the need created by the well site. Therefore, I suggest that it would not be relevant to make a comparison between the impact of the proposal and any fence that would have permitted development rights.
513. The factors put forward by the Appellants, should very special circumstances be needed to justify the fence, were policy support for shale gas exploration, noise mitigation benefits, the fact that similar schemes elsewhere had been allowed on this ground and, as discussed above, the temporary nature of the acoustic barrier which they consider limits its harm.
514. In terms of policy support, despite the current moratorium on the issue of licences for hydraulic fracturing and the removal of paragraph 209(a) from the Framework relating to support for on-shore unconventional hydro-carbon gas exploration and extraction, the overall policy position has not changed. WAF considers that, because no licenses are currently being issued for hydraulic fracturing, there is consequently no present need for the proposal and policy support is consequently lacking. **[444]**
515. Nevertheless, there is still Government support for shale gas exploration and extraction provided it can be safely achieved **[139, 140]** and this is given '*great weight*' and is described as being '*of national importance*'. **[78]** This is a factor that carries significant weight in favour of the proposal. This application is for an exploratory well with the ultimate aim of establishing whether shale gas is present.
516. However, the fence would only be required in the form proposed in order to mitigate the noise problem caused by the construction and operation of the well and I consider that this factor does not contribute towards the existence of very special circumstances. **[231(b), 321]**
517. In terms of the other sites, these were granted permission against a different policy background and I suggest that they do not provide a direct comparison to the circumstances here.
518. Local residents objected strongly to the erection of a 3m high fence for a number of other reasons, including its impact on the countryside, particularly the right of way which would run alongside it, and the sense of enclosure it could cause in the gardens of the Berne Square. These are additional factors which weigh against it in the planning balance. **[446, 452, 453, 456]**
519. The material considerations in favour of the scheme must outweigh not only any Green Belt harm but also any other harm and therefore an assessment of this matter will be carried out after all other matters, together with any potential harm, have been considered.
520. If, however, the Secretary of State disagrees with the foregoing assessment and considers that no separate planning permission is needed for the acoustic barrier, no further action needs to be taken, other than including the fence in the

description of the development, so that its detail can be controlled by condition. Should it be concluded that planning permission is needed and should be granted, the above action is also recommended.

521. Notwithstanding the matter of the fence, the question of the night time noise limits needs to be addressed. It can be seen from the summary of the parties' cases earlier in this Report and as previously noted, that there is fundamental disagreement between which guidance it is appropriate to follow in order to set the night time noise levels limit.
522. The Appellants rely principally on the WHO guidance from 2018 and submit that the noise from the rig is akin to that from distant steady state road traffic. This guidance sets the limit for this type of noise at 44 – 45 dB L<sub>night</sub> but does not set any specific levels for construction, industrial or surface minerals activities noise. With a 3dB adjustment for façade reflection, this gives a level of 42dB LA<sub>eq, 1hr</sub> (free field). PPGM states that for any operations during the period 22.00 – 07.00 noise limits should be set to reduce to a minimum any adverse impacts, without imposing unreasonable burdens on the mineral operator. In any event the noise limit should not exceed 42dB(A) LA<sub>eq,1h</sub> (free field) at a noise sensitive property.
523. If the Appellants' case is accepted and the limit is set at 42dB LA<sub>eq, 1hr</sub> (free field), there would be no need for further mitigation. Nevertheless, the objectors consider that, as this level would be the normal maximum, the requirement in the PPGM to '*reduce to a minimum any adverse impacts*' indicates that a lower limit should be imposed. They again draw attention to the vulnerability of the Berne Square residents and WAF notes that noise from the rig cannot be considered as being akin to that from steady road traffic and would, rather, be a completely alien source of noise in the current environment. The witnesses for the objectors also consider that, as it is highly likely that at times the LOAEL would be between 34 – 36dB LA<sub>eq, 1hr</sub> (free field), a level of 37dB LA<sub>eq, 1hr</sub> (free field) would better protect the amenities of the residents.
524. It seems to me that, when audible, the noise from the rig is likely to appear intrusive to the residents, who are not used to having any kind of constant background noise intrusion at night at present. **[162]** Even if the noise from the rig could be equated to steady traffic noise, it is likely that this would be the type of noise created by a busy motorway or similar at some distance from the site. It would not be similar to the occasional car driving along Dinnington Road in the small hours of the morning and would be a constant source of sound that could prove a persistent annoyance that could prevent residents from getting to sleep, especially if their windows were open during the warmer months. **[168, 290]**
525. It is also the case that, while people can, in time, become used to night time noise, this is not likely to be the case here, where the noise would be limited to the 3 months or so during which the drilling would take place. It may well be considered that it would be reasonable to expect the residents to cope with a noise level that would be, on the objectors' reckoning, a minimum of about 2dB above the level they consider acceptable for this limited period. It does appear, however, that there may well be occasions when the level could be between 6 to 19 dB(A) above the background levels. **[170(c), 181, 294]**
526. There were a variety of possibilities mooted for the background noise levels and, whilst I note that those submitted by WAF's witness did not comply fully with the guidelines for measuring these, they nonetheless demonstrate that for at least a

week during the survey, the background noise levels were lower than projected by the Appellants. **[181, 185]**

527. As previously noted, RMBC asks for a limit of 37dB LAeq 1hr (free field) and justify this as being a level set between the limits discussed in the NPSE, the LOAEL and SOAEL. The SOAEL is the level above which significant adverse effects on the quality of life would occur. RMBC consider that the SOAEL would be likely to be 42dB LAeq 1hr (free field) and, as previously noted, the LOAEL was likely to be 35dB LAeq 1hr (free field). The level of 37dB LAeq 1hr (free field) is considered to be a reasonable compromise that would deliver significant benefits to the residents of Berne Square.
528. I consider that, in line with the PPGM, it would be beneficial to set the lowest limit possible without imposing an unreasonable burden on the operator. The Appellants submit that any level below 42dB LAeq 1hr (free field) would be unreasonable. They note that, at this stage, the well would not be profit-making and could result in an expenditure of £8 million with no guarantee of return. The cost of not drilling at night could, apparently, be up to £2 million and the Appellants originally said they have already specified the quietest rig currently available.
529. However, the Appellants' witness subsequently agreed that quieter rigs are available but suggested that they would only give a reduction of 1dB. He considered that, if a limit of 37dB LAeq 1hr (free field) were to be set, the rig would need to be encased and claims that the costs of enclosing the works and the rig would also cost a substantial amount.
530. RMBC and WAF take a sceptical view of these arguments, considering that the costings are speculative and unsupported by evidence and challenge the view that there are no quieter rigs available. They note that any slight increase in the cost of renting a quieter rig would be minimal when set in the context of an investment of about £8 million which is envisaged without any guaranteed return.
531. It seems to me that there is a lack of proper assessment provided by the Appellants to demonstrate that the additional costs that would be incurred by limiting the night time noise level to 37dB LAeq 1hr (free field) would amount to an unreasonable burden for them. I would expect the Appellants to provide a detailed analysis of the actual costs involved in order to assess these against the benefits. **[200, 300-307]**
532. From the previous discussions on noise and the evidence submitted in respect of the impact of the rig, I consider that there could be an unacceptable impact on the residents of Berne Square if the night time noise limit was set above 37dB LAeq 1hr (free field). The decision taker has a duty under the EA 2010 to have regard to the needs of those with a protected characteristic and remove or minimise disadvantages suffered by such persons. From the evidence given to me at the Inquiry, I consider that many of the Berne Square residents have disabilities that mean they have such a protected characteristic and that this indicates that all possible measures should be taken to ensure that the impact of the development on them is minimised. **[195, 199, 200]**
533. The Appellants' witness on this topic maintained that any such duty has been discharged through the adoption of the relevant LP policies which have already

been assessed against the requirements of the EA. However, those policies are generic and the impact that a specific development would have on a particular group of people with a protected characteristic, in my view, falls to be assessed on a case by case basis. In this situation, I would recommend that the level for night time noise be set at 37 dB LAeq 1hr (free field). **[209]**

534. Therefore, I recommend that, if planning permission for the proposal is granted, a condition is imposed that sets the noise limits of 62dB LAeq 1hr (free field) for the majority of Stages 1 and 5, 50dB LAeq 1hr (free field) for Stage 2 daytime/evening and 37dB LAeq 1hr (free field) for Stage 2 night time, as set out in preceding paragraphs. If the Secretary of State does not agree with these conclusions but nevertheless considers that planning permission should be granted, the maximum limits suggested by the Appellant are 70dB LAeq 1hr (free field) for Stages 1 and 5, 55dB LAeq 1hr (free field) for Stage 2 daytime/evening and 42dB LAeq 1hr (free field) for Stage 2 night time.
535. Finally on noise, the Appellants challenge the inclusion of the noise from the rig in RMBCs submissions to the Inquiry. They say that it is clear that was not included in the original reasons for refusal, and it is unreasonable to do so now. Nevertheless, the issue was covered in the submissions from WAF and local residents and is therefore a valid consideration for the Secretary of State to take into account.

### **Highway issues**

536. RMBC do not raise any concerns over highway safety and the Inquiry was told that the original reason for refusal on this ground was withdrawn after a number of specialist consultants were approached with a view to supporting the Council's concerns but concluded that they were unable to do so. **[99]** Nevertheless, WAF has commissioned their own report on highway matters which concludes that safe and suitable access to the site could not be achieved and that there would be an unacceptable impact on highway safety.
537. WAF firstly criticises the Appellants witness's methodology on the calculation of traffic flows and considers that he did not follow the guidelines which he agreed were relevant. In particular, he uses an average traffic flow as the background level and compares it to the average flow from the site operations, considering that there would be times when this would be exceeded but also when it would be below the mean. WAF submits that it is irrational not to cater for the worst case scenario when traffic flows from the proposal would be heaviest. However, the Appellants' traffic consultant states that average flow rates are always used and that in this case they are, in any event, low.
538. I find no reason to disagree with the Appellants' witness's methodology. He has many years of experience in this field compared to the witness for WAF, who has no formal qualifications in the field. **[130]** The traffic flows and the impact of these was reviewed by the Appellants' witness and compared with the findings of the original ER. The updated findings are set out in his report<sup>78</sup> and the impacts of the predicted traffic flows and the percentage increase due to the proposals are clearly set out. They find that the percentage increase in HGV traffic during the construction period would be 2% or less which is not considered significant.

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<sup>78</sup> CD 7.11

539. The Appellants' report notes: *'Considering the overall 46 weeks of temporary construction activity, the daily average value is 36 vehicles, which is 18 vehicles each way. This is an average of between 1 and 2 vehicles per direction per hour over a 12 hour working day. The associated daily HGV average is 24, which is 12 HGVs each way. This is an average of 1 HGV per hour in each direction over a 12 hour working day'*. Even if a shorter working day were contemplated, I consider that the number of movements are not sufficient to prove significant in environmental terms, particularly given the temporary nature of the construction and operational phases. **[97-98]**
540. It seems to me that whilst there may be valid concerns about the effects of increased traffic flows through the village taking place during the periods when children will be crossing the road to the pre-school, primary school or the bus stops to access secondary schools, this could be dealt with through a condition imposed on any planning permission, if considered necessary. WAF have suggested such a condition which will be discussed in the Conditions section of this Report.
541. The Appellants' report demonstrates why the magnitude of impact is considered to be *'no change'*, which is where there would be a less than 10% increase in traffic. It also assesses the sensitivity of receptors as *'medium'* which relates to *'Residential (with frontage onto road under consideration), educational, healthcare, leisure, public open space or town centre/local centre land use'*.
542. Turning to the assessment of significance, which is a combination of the sensitivity of the receptors and the magnitude of impact, the report classes this as *'neutral'*. Even if the sensitivity of the receptors was considered to be *'high'*, based on the special circumstances of the residents of Berne Square, and the magnitude of impact was raised to *'negligible'* which relates to a 10 – 30 % increase in traffic, the impact would only be *'slight'*, which for a temporary situation I would nevertheless still consider to be satisfactory. **[131]**
543. WAF also criticised the proposed route by which traffic would access the site and the proposal to hold vehicles at staging posts on the route until they could be taken in convoy to the site. Overall, they consider the Appellants' assessment to be defective. There was no dispute about the road widths measured by WAF which at their narrowest points would be 5.5m and, whilst a car and HGV could pass at such a point, it would be difficult for two HGVs to do so.
544. The route would come from the Gateford roundabout on the A57 and approach from the south east along Woodsetts Lane which turns into Worksop Road as it reaches the village of Woodsetts. It would then travel north west through the village onto Dinnington Road which leads to the site where traffic would turn left off the carriageway. I saw at my site visits that this road is a single carriageway rural road which is largely straight but which also has some bends and, as previously noted, some narrower sections. It is subject to the national speed limit of 60mph until it reaches Woodsetts, where there is a 30mph limit. It is proposed to extend this limit to a point beyond the site access to the north west.
545. There are no restrictions on HGVs coming along these roads at present although it is unlikely that such vehicles would use this route unless they were coming to a local destination. However, if there were problems on the A57, particularly between the Gateford roundabout and South Anston, it is possible that vehicles could divert through Woodsetts.

546. There was disagreement about the significance of the accident record along the route but, whilst any accident is a cause for concern, an analysis of the events does not seem to me to indicate that there are any particular physical features of the roads that have caused them, or any points where clusters have occurred which would demonstrate that accidents are clearly more prevalent.
547. Turning to the concerns about the convoy, I can see that this strategy might be likely to create its own problems, with such convoys having difficulty with oncoming traffic at pinch points and, depending on the location of the staging posts, at the Gateford roundabout where an increase in traffic is already expected due to other nearby development coming forward. Nevertheless, the project would be controlled by a TMP, secured by condition, which would ensure that all appropriate safety controls could be considered in detail before they are put in place.
548. In respect of the access and the need to ensure that conflicts between residents and construction traffic entering and leaving the site are avoided, the Appellants have proposed that banksmen be sited at strategic points to control the flow. Although there is doubt among the objectors that this would work, from what I saw at the site visit, I see no reason why this should be the case or be appreciably worse than the situation that exists at present. Although it might prove annoying for the residents to be made to wait and give way to construction lorries, once again the limited time scale during which traffic flows would be at their peak is relatively short.
549. I consider that, given the limited duration of the construction period which is when the largest vehicles would be accessing the site, there is no significant data to demonstrate that the route would be unsafe or unacceptable. **[97-98]**
550. However, even if the highway safety issues are considered not to be sufficient to refuse the grant of planning permission, I nevertheless consider that it is the case that the increased number of heavy goods vehicles that would access the site during the development and de-commissioning phases of the proposal would cause some harm to the amenities of the local residents.
551. There would be a perceptible increase in the number of large vehicles coming through the village and fears of a decrease in pedestrian safety, particularly for children crossing the road to get to school, are a valid concern. As previously noted, the road is narrow in places and lorries would need to slow down to pass if they met at these points and parked cars would also be likely to hamper HGV movements. Whether travelling unimpeded through the village or whether having to slow down or give way to oncoming traffic, the presence of the additional lorries could, I consider, be disturbing to residents. This adds some weight to the objections to the proposal.

### **Other matters**

552. On the matter of air pollution, this was not raised by RMBC and the Appellants' witness concludes that there would be no harmful impacts. This evidence was not seriously challenged by WAF who had initially raised concerns on this issue. Those objectors who raised the concern did not present any compelling evidence to counteract the findings set out in the Appellants' report and application documents and this matter does not, I consider, add any weight to the case against the development.

553. Neither do any of the other objections to the proposal seem to me to add further weight to the case against it. The well would be of a type that has been used many times before in mineral exploration and does not involve hydraulic fracturing. Objections based on the need to concentrate resources into developing renewable forms of energy are not directly relevant to this proposal and cannot therefore be accorded any great weight here.
554. The construction of the well in this area of tranquil countryside will inevitably cause significant visual intrusion and will be clearly visible from many viewpoints, including the PROW that runs close to the site. This is a matter that weighs against the proposal and to which I would give moderate weight. Nevertheless, it is a fact recognised in planning policy that minerals can only be worked where they are found and the Appellants would not be investing a considerable amount of money in an exploratory operation were there little possibility of finding gas in this location.
555. Whether or not it would subsequently be appropriate or desirable to extract any gas found would have to be the subject of further applications for planning permission and licences and the merits considered against the planning policy background applicable at the time.

## CONDITIONS

556. A draft list of conditions<sup>79</sup> that RMBC considered would be necessary and appropriate if planning permission were to be granted for the proposal, together with the reasons for imposing them, was discussed during the course of the Inquiry. The Appellants disagree with the need for some of the conditions and the wording of others and WAF also had suggestions and comments that were not agreed at the Inquiry.
557. Subsequently, a revised list was attached to RMBC's Closing Submissions and the Appellants and WAF have made their comments on these. Unless stated otherwise, I consider that those conditions agreed by the parties meet the tests in the Government's Planning Practice Guidance and recommend that they are necessary for the development to go ahead. I consider all the suggested conditions in subsequent paragraphs and a list of those that I recommend should be attached to any planning permission and the reasons for them is attached as Annex 1 to this Report.
558. Condition 1 is the normal commencement condition required to comply with the TCPA and is agreed by the parties.
559. Condition 2 requires the development to be carried out in accordance with a list of the relevant plans, and also requires the submission of a drawing to detail the site access and proposed noise mitigation methods to define the permission, for the avoidance of doubt, to ensure that existing properties retain appropriate access and that details of any potential noise barrier are agreed in advance of development commencing. This is also agreed subject to a suggestion by the Appellants that the scheme should be in accordance with the scheme required in the condition relating to the noise barrier. This is a sensible addition and I recommend it is included.
560. Condition 3 requires a copy of the conditions and approved plans to be kept available in the site office for the avoidance of any doubt as to their scope and is agreed.
561. Condition 4 limits the permission to the 5 years applied for and is agreed.
562. Condition 5 requires the submission and implementation of a traffic management plan and route management strategy, to ensure highway safety. The Appellants have suggested an amendment to allow for a change of route if previously agreed with the local planning authority. WAF suggested that the condition should be more specific and require all HGVs to access and exit the site using only the preferred route. I consider this last amendment to be unnecessary as the adopted route management strategy would set the requirement to use the preferred route, subject to the amendment suggested by the Appellants, which would remain under the control of RMBC in any event.
563. WAF suggests an additional condition that would limit the times during which HGVs could use the route along Dinnington Road, to minimise disruption to local residents and to avoid those times when children would be crossing the road to the school. If the Secretary of State agrees that there is a need to limit the hours of access to this extent, I recommend this condition is imposed.

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<sup>79</sup> CD 48

564. However, it seems to me that the actual numbers of HGVs that are likely to access the site during the suggested restricted house would not be great enough to cause an unacceptable risk to highway safety or warrant the additional restrictions that this would impose on the Appellants. If this is accepted, then the condition suggested by RMBC would suffice.
565. Condition 6 requires the provision of signage for the approved route to be installed before the development commences in the interests of highway safety and is agreed.
566. Conditions 7 – 9 relate to the measures to be taken in relation to site layout, drainage and the prevention of mud from the site being deposited on the highway in the interests of safety and amenity and are agreed.
567. Condition 10 requires a photographic dilapidation survey of Dinnington Road to be undertaken prior to the commencement of works and provides for a scheme for the repair of any damage incurred to be submitted if requested, to ensure that any such damage caused will be repaired in the interests of highway safety and amenity.
568. Conditions 11 and 12 relate to surveys for the presence of protected species and the provision of a scheme of mitigation measures if required and the update of the scheme if works are not started or are suspended within a set time frame. These conditions are agreed.
569. Condition 13 relates to the provision of a dust management plan and is agreed.
570. The Appellants suggest that conditions 14 and 15, relating to the protection of adjacent trees and hedgerows and the breeding birds within them, are unnecessary as there are no trees or hedgerows contained within the 'red line' of the application. I agree that it would be unreasonable to require the Appellants to undertake surveys or works outside their area of control and find that there is nothing to suggest that any planting would be affected by the proposals. These conditions have been listed in Annex 1 for the secretary of State's but 'struck through'
571. Condition 16, relating to the provision of a biodiversity improvement scheme is also in dispute. The Appellants maintain that there is nothing within the appeal site that could be done to improve biodiversity because the land will be required to be returned to its current agricultural use. Although it is accepted that there could be work carried out within the blue line on the application plan this would have to be subject to landowner agreement, which might not be obtained. The Framework requires development to contribute to and enhance the natural and local environment and I consider that the condition is required to ensure such benefits can be obtained. It would be for RMBC to agree a scheme whilst giving consideration to the practicalities of what can realistically be achieved.
572. Condition 17 relates to an archaeological investigation scheme, which is necessary to ensure any significant details discovered during the works are recorded and has been agreed.
573. Condition 18 seeks to set up a community liaison group to ensure that the scheme is effectively managed and monitored and participants act responsibly for the duration of the development. The Appellants have suggested additional provisions to ensure that if any of the parties acts unreasonably, measures will

- be sought to deal with the problem or ultimately to disband the group should this not prove possible. I consider that this is necessary to prevent any party acting in a manner that would prevent the condition from being complied with.
574. Condition 19 is necessary to deal with any contamination found on the site and Condition 20 controls external lighting on the site, to prevent light pollution or nuisance to local residents. Both have been agreed.
575. Conditions 21 and 22 are required to control how the restoration and aftercare of the site is carried out. WAF have suggested a minor amendment which I consider is necessary to ensure that approval of the scheme needs to be obtained from RMBC; otherwise the conditions are agreed.
576. Condition 23 relates to the acoustic barrier and it is left to the decision taker to set the height of any barrier that is considered necessary. For the reasons set out in preceding paragraphs, I recommend that the barrier is required and the height should be 3 metres.
577. Condition 24 relates to the limits set for the working hours for the construction and operation of the drilling rig which are necessary to protect residential amenity. This condition has been agreed.
578. Condition 25 is the condition that would control the route to and from the site and, if required the times at which HGVs could access the site. My conclusions on the need for time restrictions are set out above and I recommend that the condition as agreed between RMBC and the Appellants is imposed.
579. Condition 26 requires the submission of a Noise Management Plan and, whilst this has been agreed in principle by RMBC and the Appellants, WAF has suggested a more detailed wording which it considers necessary. This includes measures to monitor vibrations as well as noise and, given the nature of the proposed operations, I consider that this would be necessary to safeguard the amenities of local residents and recommend that the suggested additions to this end are included in the condition. However, I also recommend that item (iii) of RMBC's condition is deleted as this is duplicated by condition 27.
580. Condition 27 is the one that would set the noise limits for the development and, for the reasons set out in preceding paragraphs, I conclude that the disputed noise limits for the various stages of the development should be:
- 70dB LAeq 1hr (free field) for no more than 5 non-consecutive days for Stages 1 and 5, then otherwise no more than 62dB LAeq 1hr (free field).
- 50dB LAeq 1hr (free field) for Stage 2 – 4 (daytime drilling operations and access track)
- 37dB LAeq 1hr (free field) for Stage 2 -4 (night time drilling operations)
581. Condition 28 requires approval of the model and specifications of drill rig proposed in order to protect residential amenity and is agreed.
582. Condition 29 controls the type of reversing warning alarms to be fitted to vehicles and plant based at the site, again to protect residential amenity and is also agreed.

## OVERALL CONCLUSIONS AND BALANCING EXERCISE

583. Whilst the appeal proposal is not covered by the Government's recent precautionary approach to the issue of hydraulic fracking consents, the Appellants have confirmed that the purpose of the exploration is to search for shale gas deposits which would ultimately be extracted by the process known as 'fracking'.
584. In these circumstances, it is reasonable to consider whether the merits of the appeal activities, which are designed to facilitate a process which is currently under review, are sufficient to justify the impact on the living conditions of local residents, particularly the vulnerable occupants of Berne Square, if these impacts are considered to conflict with the requirements of the relevant DP policies. I therefore consider that the WMS is a material consideration relevant to this case. **[436]**
585. The DP contains permissive policies<sup>80</sup> on exploration for shale gas and any planning permission would be conditioned to begin within 3 years. Whether or not the Appellants would want to take the risk of starting exploration before the current restrictions are lifted is a commercial decision for them, but it must be the case that any immediate value of the development as an exploratory or 'listening' well (which is the proposed use in Stage 4) would be significantly reduced unless and until the restrictions are lifted. **[440]**
586. However, there has been no policy change in the Government's support for shale gas exploration or to the DP support for it, where it can be carried out without adverse impacts, and this continues to be an important factor in favour of the grant of planning permission, albeit with slightly less weight at the present time due to the operation of the latest WMS and the deletion of paragraph 209(a) from the Framework.
587. It is clear that the proposal would give rise to noise and disturbance to local residents through the construction, decommissioning and drilling periods, although the actual duration of the works would be relatively short. Nevertheless, as set out in previous paragraphs, I consider that the scheme would be acceptable and meet the requirements of Local Plan policy SP52 with the 3m high acoustic barrier, which is needed to reduce the noise to reasonable levels and which I also consider needs planning permission. Nonetheless, I consider that permission for it could be granted through this appeal by way of an amendment to the description of the development, without prejudice to any interested parties. The amendment was agreed by the Appellants, if the acoustic barrier was found to be necessary.
588. I conclude that the acoustic barrier would be inappropriate development in this Green Belt location and there would consequently need to be very special circumstances sufficient to outweigh the Green Belt harm and the other harm identified in preceding paragraphs. This harm includes loss of Green Belt openness and the disturbance caused by increased levels of traffic. Whilst I have found that highway safety could be secured through conditions, it is still the case that village residents would be subjected to noticeably increased levels of HGVs passing through and this must be considered to cause some harm to their living conditions.

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<sup>80</sup> CD3.1

589. Nevertheless, I consider that the limited time scale of the parts of the development that would cause harm (the increase in traffic and the presence of the fence) would be outweighed by the policy support for the proposal. **[138]** It seems to me that it would be perverse to refuse planning permission for the whole proposal, if otherwise found to be acceptable, only because the temporary fence was considered to be inappropriate development. I recommend that these considerations would amount to the very special circumstances required to justify the erection of the fence for a period of some 10 months.
590. It has been agreed by RMBC and the Appellants that the noise levels could be controlled through conditions and the presence of the acoustic barrier. There is also agreement between them that there would be no reason to refuse the proposal on highway safety grounds. For the reasons set out in preceding paragraphs, I agree with this assessment. Although WAF still raise objections on noise and highway safety grounds, I consider that these can be overcome by conditions and do not weigh against the proposal.
591. With sufficient safeguards, there seems to me to be no reason why the works should have an impact that would be so harmful so as to warrant refusal of planning permission. Nevertheless, there are very vulnerable residents involved and 'best practice' would be to ensure that the noise levels to which they would be subjected, in particular the night time noise levels from the operation of the rig, are reduced to the lowest possible, subject, of course, to the need to not impose an unreasonable burden on the developers. It has been agreed that the acoustic barrier would not impose such a burden and I have also found that a night time noise limit of 37dB LAeq 1hr (free field) would not be unreasonable. Therefore, I recommend that a condition setting noise limits at those suggested by RMBC should be imposed on any planning permission.
592. As I have found that the acoustic barrier is required to meet the noise limits, I also recommend that the description of the development is altered to include it so that it is part of the planning permission.
593. The revised description should therefore read: *the construction of a well site and creation of a new access track, a temporary 3m high acoustic barrier along it, mobilisation of drilling, ancillary equipment and contractor welfare facilities to drill and pressure transient test a vertical hydrocarbon exploratory core well and mobilisation of workover rig, listening well operations, and retention of the site and wellhead assembly gear for a temporary period of 5 years on land adjacent to Dinnington Road, Woodsetts, Rotherham.*
594. However, if the Secretary of State finds that no acoustic barrier is required there would be no need to alter the description of development to include it and the noise levels suggested by the Appellants for the daytime/evening limits of 70 LAeq 1hr (free field) (stages 1 and 5) and 55dB LAeq 1hr (free field) (Stage 2 daytime/evening) should be included in the relevant noise condition. If the Secretary of State finds that the higher limit on night time noise levels for stage 2 should also be imposed, this should be 42dB LAeq 1hr (free field) as suggested by the Appellants.

## **RECOMMENDATION**

595. I recommend that the appeal be allowed and planning permission be granted for the proposal, subject to the suggested amendment to the description of the development and the conditions set out in Annex 1 of this Report.

*Katie Peerless*

Inspector

## **ANNEX 1**

### **Suggested Conditions**

#### General

01

The development hereby permitted shall be commenced before the expiration of three years from the date of this permission. The Local Planning Authority shall be notified in writing within a minimum of 7 days of the date of the commencement of the development.

#### *Reason*

*In order to comply with the requirements of the Town and Country Planning Act 1990 and for the avoidance of doubt.*

02

The permission hereby granted shall relate to the area shown outlined in red on the approved site plan and the development shall only take place in accordance with the submitted details and specifications as shown on the approved plans (as set out below)

P304-S21-PA-1001 Pre-Site Access Plan  
P304-S21-PA-00 Strategic Location Plan  
P304-S21-PA-01 Application Site Plan  
P304-S21-PA-04 Existing Ground Plan  
P304-S21-PA-05 Proposed Site Entrance & Highway works  
P304-S21-PA-06 Proposed Site Layout Plan - Construction  
P304-S21-PA-07 Proposed Site Layout Plan - Drilling Stage  
P304-S21-PA-08 Proposed Site Layout Plan - Listening Stage  
P304-S21-PA-09 Proposed Site Restoration  
P304-S21-PA-10 Proposed Lighting Plan - Drilling & Coring  
P304-S21-PA-11 Proposed Drainage Plan  
P304-S21-PA-12 Proposed Site Layout Plan - Suspension  
P304-S21-PA-13 Proposed Internal Access Plan  
P304-S21-PA-16 Proposed Sections & Details  
P304-S21-PA-17 Proposed Site Layout Plan - Possible workover  
P304-S21-PA-21 Parameter Sections - Develop. & Establish  
P304-S21-PA-22 Parameter Sections - Drilling & Coring  
P304-S21-PA-23 Parameter Sections - Suspension  
P304-S21-PA-24 Parameter Sections - Work over of Well  
P304-S21-PA-25 Parameter Sections - Listening Stage  
P304-S21-PA-26 Parameter Sections - Abandonment  
P304-S21-PA-30 Fence Details  
P304-S21-PA-31 Lighting Examples

Notwithstanding the indicative details shown on drawing P304-S21-PA-05 Rev D, before development commences, a detailed site access and potential noise mitigation drawing, which shall be in accordance with the scheme to be provided under Condition 23, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall demonstrate how safe access to properties accessed off the site access track, and the development site, shall be achieved, as well as the

location, extent and nature of any necessary physical noise mitigation required to meet the limits set out in condition 27.

*Reason*

*To define the permission and for the avoidance of doubt and to ensure that existing properties retain appropriate access and that details of any potential noise barrier are agreed in advance of development commencing.*

03

A copy of these conditions, together with the approved plans and any details or schemes subsequently approved pursuant to this permission, shall be kept at the site office for the development at all times, and the terms and contents thereof shall be made known to the supervising staff on the site.

*Reason*

*To define the permission and for the avoidance of doubt.*

04

The development hereby permitted shall be for a limited period, being the period of five years from the date of commencement, as notified under condition 1. The site shall thereafter be cleared of all plant, buildings, machinery and equipment and the land restored in accordance with condition 21.

*Reason*

*To define the permission and for the avoidance of doubt.*

Highways and Traffic

05

Prior to the development being commenced, details of a Traffic Management Plan and Route Management Strategy shall be submitted to and approved in writing by the Local Planning Authority and the approved details shall be implemented throughout the duration of the development. Both shall be based on a route for all vehicles over 3.5 tonnes being from Gateford Roundabout via C70 (Woodsetts Road and Dinnington Road) to application site. Any exceptions to the Traffic Management Plan or Route Management Strategy to allow for more efficient local deliveries shall be agreed in advance with the Local Planning Authority.

*Reason*

*In the interests of highway safety and amenity.*

06

The development shall not be commenced until a signage scheme for C70 between Gateford Roundabout and the site access has been implemented in accordance with details which shall have been submitted to and approved in writing by the Local Planning Authority.

*Reason*

*In the interests of highway safety and amenity.*

07

Details of the surfacing and draining of on-site vehicular areas shall be submitted to and approved in writing by the Local Planning Authority before the development is commenced and the approved details shall be implemented before the development is brought into use.

*Reason*

*To ensure that surface water can adequately be drained and to ensure that the use of the land for this purpose will not give rise to the deposit of mud and other extraneous material on the public highway in the interests of the adequate drainage of the site and road safety.*

08

No drilling operations shall take place until space has been laid out within the site, in accordance with drawing no. P304-S2-PA-13 Rev B, for vehicular parking and turning facilities, and that space shall thereafter be kept available for parking and turning for the duration of the permission.

*Reason*

*In the interests of road safety and amenity*

09

No development shall take place until details of the measures to prevent the deposit of mud, clay and other deleterious materials upon the public highway have been submitted to, and approved in writing by, the local planning authority. The measures shall include as appropriate:

- i) the provision and use of wheel-cleaning facilities;
- ii) the provision and use of lorry sheeting;
- iii) the use of a mechanically propelled road sweeper on the public highway; and
- iv) a programme for implementing the above.

Development shall be carried out in accordance with the approved measures. In the event that the measures do not adequately prevent the deposit of mud, clay and other deleterious materials upon the public highway then, within 7 days of a written request from the local planning authority, a scheme of revised and programmed additional measures to be taken in order to prevent the deposit of materials upon the public highway shall be submitted to the local planning authority for its approval in writing. Following any approval, development shall thereafter be carried out in accordance with the approved revised and programmed additional measures.

*Reason*

*In the interests of highway safety and amenity.*

10

No development shall take place until details of a photographic dilapidation survey of the sections of Dinnington Road, Woodsetts Lane and Worksop Road to be used by development traffic has been undertaken and submitted to, and approved in writing by, the local planning authority. A scheme for the repair of any damage incurred as a direct result of site traffic using Dinnington Road, Woodsetts Lane and Worksop Road, which shall include a delivery mechanism and programme for the works, shall

be submitted to the local planning authority, for approval in writing, within 14 days of being requested. The approved scheme shall thereafter be implemented in full.

*Reason*

*In the interests of highway safety and amenity.*

Ecology/Trees/Hedgerows

11

No development shall take place until verification surveys for the presence of protected species on the site and buffer area have been undertaken and the results submitted to, and approved in writing by, the local planning authority. If protected species are found on the site and buffer area which would be likely to be affected by the development, no development shall take place until mitigation measures have been submitted to, and approved in writing by, the local planning authority. Development shall thereafter be carried out in accordance with the approved mitigation measures.

*Reason*

*In order to minimise the impact on surrounding wildlife.*

12

If the development hereby permitted does not commence (or, having commenced, is suspended for more than 12 months) within 2 years from the date of this decision, the approved ecological measures secured through Condition 11 shall be reviewed and, where necessary, amended and updated. The review shall be informed by further ecological surveys commissioned to establish if there have been any changes in the presence and/or abundance of protected species and identify any likely new ecological impacts that might arise from any changes. Where the survey results indicate that changes have occurred that would be likely to result in ecological impacts not previously addressed in the approved scheme, the original approved ecological measures shall be revised and new or amended measures, together with a timetable for their implementation, shall be submitted to, and approved in writing by, the local planning authority prior to the commencement or recommencement of the development. The development shall thereafter be carried out in accordance with the approved new or amended ecological measures and timetable.

*Reason*

*To define the permission and for the avoidance of doubt.*

13

No development shall take place until a Dust Management Plan, detailing a programme of measures to minimise the spread of airborne dust from the site during the development, has been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved plan.

*Reason*

*In order to minimise the impact on residential properties and on the surrounding wildlife.*

~~14~~

~~No hedgerows shall be trimmed, laid or removed and no vegetation shall be removed during the bird breeding season between 1 March and 31 August inclusive, unless they have been previously checked and found clear of nesting birds in accordance with Natural England guidance. Netting shall not be deployed on hedgerows to prevent birds from nesting. If appropriate, an exclusion zone shall be set up around any vegetation to be protected. No work shall be undertaken within the exclusion zone until birds and any dependant young have vacated the area.~~

~~Reason~~

~~In order to minimise the impact on the local wildlife.~~

~~15~~

~~Prior to the commencement of development, a scheme for the protection of adjacent or potentially affected hedgerows and trees shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall thereafter be implemented and maintained until site activity ceases. A scheme shall also be agreed in writing and implemented prior to any restoration works commencing and shall not be removed until site works are complete and the site restored.~~

~~Reason~~

~~To ensure that hedgerows and trees are not damaged as a result of construction and restoration activity.~~

16

Prior to the commencement of development, a Biodiversity Improvement Scheme shall be submitted to and approved in writing by the Local Planning Authority. This scheme shall indicate how ecological enhancement and biodiversity gain will be delivered. The development shall then be carried out in accordance with the approved details.

Reason

*In order to enhance the level of biodiversity and ecological gain.*

### Archaeology

17

No development, including any groundwork, shall take place on any undeveloped area of the site until the applicant, or their agent or successor in title, has submitted a Written Scheme of Investigation (WSI) to the local planning authority which has subsequently been approved in writing. The WSI shall set out a strategy for archaeological investigation to include:

- i) a programme and method of site investigation and recording;
- ii) a requirement to seek the preservation in situ of identified features of importance;
- iii) a programme for post-investigation assessment;
- iv) provision for analysis and reporting;
- v) provision for the publication and dissemination of results;
- vi) provision for the deposition of the archive created;
- vii) nomination of a competent person, persons or organisation to undertake the works; and
- viii) a timetable for completion of all site investigation and post-investigation

works. No development, including any groundworks but excluding any work associated with the approved WSI, shall take place until the local planning authority has confirmed in writing that the relevant pre-commencement requirements of the WSI have been fulfilled. The development shall be undertaken in accordance with the approved WSI

*Reason*

*In order to satisfactory record any archaeological detail.*

Community Liaison Group

18

No development shall take place until a scheme to convene, meet and operate a Community Liaison Group has been submitted to, and approved in writing by, the local planning authority. The scheme shall include measures to seek membership from the local planning authority and the local community. The scheme shall be implemented as approved. Should third party membership of the CLG not be achievable, or if parties are acting unreasonably, the CLG will be suspended and a strategy put to the Local Planning Authority to address the issues encountered and a timetable for implementation. Should resolution not be achievable then the CLG will be disbanded.

*Reason*

*In order to ensure that the scheme is effectively managed and monitored and participants act responsibly for the duration of the development.*

Contamination

19

If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.

*Reasons*

*To ensure the protection of controlled waters including the Nottingham Castle Sandstone Principal Aquifer.*

Lighting

20

Notwithstanding condition 2, no external lighting shall be utilised in respect of any phase of the development hereby permitted until details of all external lighting for that phase have been submitted to, and approved in writing by, the local planning authority. The submitted details shall substantially accord with the lighting report submitted with the planning application. The submitted details shall also have regard to the "Guidance Notes for the Reduction of Obtrusive Light GN01:2011" produced by the Institution of Lighting Professionals and "Bats and Lighting in the UK", the Bat Conservation Trust & Institute of Lighting Engineers (2009), Bats and the Built Environment Series BCT. The approved lighting details for any phase shall be

implemented in full before the lighting for that phase is first used, and the approved lighting shall be retained for the duration of that phase, unless otherwise approved in writing by the local planning authority.

*Reason*

*In the interests of ecology and residential amenity.*

Restoration and aftercare

21

Notwithstanding condition 2, no restoration shall take place until a detailed Restoration Plan has, before 6 months of the end of the 5 year temporary permission, been submitted to the local planning authority for approval in writing. The plan shall substantially accord with the measures set out in the Proposal document, submitted to the local planning authority on 13 June 2018 and drawing no. P304-S21-PA-09 and shall include details of any noise mitigation measures and a timetable for implementation. The approved plan shall thereafter be implemented in full. The local planning authority shall be notified within 7 days of when the restoration works are complete, to allow the local planning authority to issue written confirmation that the restoration has been completed satisfactorily.

*Reason*

*To define the permission and for the avoidance of doubt.*

22

Within three months of the issue of the local planning authority confirmation of the completion of the restoration works, a scheme for the aftercare of the site for a period of five years, to promote the agricultural after-use of the site, shall be submitted to the local planning authority for approval in writing. The approved scheme shall thereafter be implemented in full.

*Reason*

*To define the permission and for the avoidance of doubt.*

23

Before development hereby permitted commences, full details of a 3m high acoustic barrier shall be submitted to and approved in writing by the Local Planning Authority prior to installation. The fence shall be substantially as shown on drawing P304-S21-PA-05 Rev D unless supporting information is provided to justify an alternative. There shall be no gaps either between the bottom of the fence and the ground, or through any section of the barrier. The acoustic barrier shall be installed as approved before any other development commences and, once installed, shall be retained for the duration of the construction of the access road and the exploration site (Stage 1 works) and also the coring and drilling activities up to and including the time that the associated equipment is removed from the site (Stage 2 works). The total duration of these works shall not exceed 10 months. During this period, the acoustic integrity of the barrier shall be maintained at all times.

The acoustic barrier shall then be dismantled no later than 7 days after the completion of the works within Stage 2.

Before the site is Restored (Stage 5 works), the Applicant shall either re-instate the acoustic barrier, or alternatively provide technical evidence, including a Management Plan to demonstrate how the activities will be undertaken without breaching the noise limits set out in Condition 27. Where the acoustic fence is to be re-erected, it shall be erected within 7 days of the commencement of the decommissioning of the site and removed within 7 days of the completion of the approved restoration works.

*Reason*

*In the interests of residential amenity.*

24

The development hereby permitted shall take place only between the following hours, except in the case of an emergency.

Non-Drilling Works

Monday to Friday – 07.00 to 19.00

Saturdays – 07.00 to 13.00

Sundays, Public and Bank Holidays – Not at any time

Drilling Works - Including the assembly and demobilisation of the drilling rigs

Monday to Friday - 24 hours

Saturdays - 24 hours

Sundays, Public and Bank Holidays - 24 hours

*Reason*

*In order to minimise the impact on residential properties and on the surrounding wildlife.*

25

HGV (vehicles over 3.5t) movements accessing and leaving the site along Dinnington Road / Woodsetts Road shall only take place between 07.00 and 19.00 Monday to Friday and 07.00 to 13.00 on Saturdays and not at any time on Sundays or on Bank or Public Holidays, except in the case of an emergency.

*Reason*

*In order to minimise the impact on the wider residential area.*

26

No development shall take place until a Noise Management Plan has been submitted to, and approved in writing by, the local planning authority. The plan shall include:

- i) data from the relevant manufacturers' noise tests for each item of significant noise emitting plant to be used on site, to establish whether noise emissions are likely to be compliant with the noise limits set out in condition 27;
- ii) if significant noise-emitting plant is not likely to be compliant, details of what mitigation would be introduced and timescales for mitigation implementation;
- iii) procedures for addressing any complaints received;
- iv) details of a Noise Monitoring Scheme, including a mechanism to address any non-compliance with the noise limits set out in condition 27;
- v) management responsibilities including operator training, compliance response and investigation, and routine environmental noise monitoring and reporting;

and

- vi) methods to determine whether noise is free from tonal, intermittent or

impulsive characteristics, the incorporation of these methods in the Noise Monitoring Scheme and a mechanism for the setting of any necessary noise limits and weighting together with any mitigation, including approval in writing by the local planning authority. Development shall be carried out in accordance with the approved plan.

*Reason*

*In the interests of amenity to the surroundings and residential amenity.*

27

Stages 1 and 5

The level of noise during the construction and restoration of the site access road when these operations are adjacent to the dwellings in Berne Square, as measured at any noise sensitive receptor, shall not exceed, 70dB LAeq 1 hour (free-field) between 07.00 and 19.00hrs. This noise limit shall apply for no more than 5 non-consecutive days.

Thereafter the level of noise during the construction set-up and restoration activities associated with the site access track hereby permitted shall not exceed, 62dB LAeq 1 hour (free-field) between 07.00 and 19.00hrs.

Thereafter noise associated with the formation and restoration of the site compound shall not exceed 50dB LAeq 1 hour (free-field) between 07.00 and 19.00hrs.

Stages 2 - 4

Noise attributable to vehicle movements on the site access track shall not exceed 50dB LAeq 1 hour (free-field), as measured at any noise sensitive receptor, between 07.00 and 19.00hrs.

Noise attributable to operations during Stages 2 – 4 inclusive excluding noise from vehicles on the site access track shall not exceed: 50dB LAeq 1 hour (free-field) at any noise sensitive receptor between 07:00 and 19.00 hours; 46dB LAeq 1 hour (free-field) as measured at any noise sensitive receptor between 19:00 and 22.00 hours; and 37dB LAeq 1 hour (free-field) between 22:00 and 07:00 hours.

All measurements expressed in the above condition shall be at a height of 1.2m – 1.5m above ground level. The noise monitoring locations will be agreed with the local planning authority. If it is not possible to monitor at the most critical location(s), the Applicant will agree comparative noise limits at the actual noise monitoring locations with the local planning authority.

Where any breach of the above noise levels occurs, all operations on site shall cease until such time that the applicant can demonstrate that the levels can be achieved. The local planning authority shall be notified in writing of the dates of completion of the construction set-up activities, within 7 days of that date, and the commencement of restoration activities, at least 7 days prior to that date.

*Reason*

*In order to minimise the impact on the wider residential area.*

28

No drilling operations shall take place until details of the make, model and technical noise specification for the drilling rigs to be used in the development hereby permitted have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details.

*Reason*

*In the interests of visual and residential amenity*

29

All reversing warning alarms fitted to vehicles and plant based at the site shall be of a 'white noise' or other broadband and low intrusion type.

*Reason*

*In order to minimise the impact on the wider residential area.*

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Jonathan Darby	Of Counsel
He called	
Andrew Lockwood BSc(Hons) MIOA	Director, Acoustic Design Technology Ltd.
Anthony Lowe BSc MSc	Planning Officer, RMBC

### FOR THE APPELLANTS:

Gordon Steele QC (Scotland)	
He called	
Kevin Martin BEng CEng MICE	AECOM Consulting Engineers
Dr Andrew Buroni BSc(Hons) MSc PhD	Technical Director of Health, RPS
Tom Pickering	Director, INEOS Upstream Ltd.
Steven Fraser BSc MPhil MIOA CEnv	Independent Environmental Consultant
Matthew Sheppard BSc(Hons) MA MRTPI	Planning Director, Turley

### FOR WOODSETTS AGAINST FRACKING (WAF) RULE 6 PARTY:

Jack Parker	Of Counsel
He called	
Gerald Kells	Independent Policy and Campaigns Advisor
David Sproston BSc MIOA	Agility Acoustics
Richard Scholey	Local resident
Katie Atkinson BA(Hons) DipTP MA MRTPI	KVA Planning Consultancy

### INTERESTED PERSONS:

Ms Deborah Gibson	Interested party
Mrs Helen Clarke	Local resident
Mrs Dawn Norman	Local resident
Mr Gareth Jones	Local resident
Ms Linda Sharpley	Local resident

Mr Nigel Butler	Local resident
Mr Adrian Knight	Local resident
Mr Kevin Windle	Local resident
Mrs Christine Timons	Local resident
Ms Diane Carrigan	Local resident
Ms Susan Wood	Local resident
Mr Christopher Harrison	Local resident
Mr Mike Hill	Local resident
Cllr. Jenny Whysall	Local Councillor
Cllr. Clive Jepson	Local Councillor
Dr Andy Tickle	CPRE
Dr Tim Thornton	Interested party
Cllr. Monica Carrol	Local Councillor
Ms Sarah Wilkinson	Woodsett's Pre-school

#### INQUIRY DOCUMENTS (ID)

- 1 Mr Steele's opening statement for the Appellants
- 2 Mr Darby's opening statement for Rotherham Metropolitan Borough Council (RMBC)
- 3 Mr Adrian Knight's statement
- 4 Mr Parker's opening statement for WAF
- 5 Mrs Helen Clarke's statement
- 6 Note from Dr Andy Tickle of CPRE
- 7 Ms Deborah Gibson's statement
- 8 Mr Nigel Butler's statement and memorandum from RMBC
- 9 Ms Linda Sharpley's statement
- 10 Mr Mike Hill's statement and appendices
- 11 Mr Gareth Jones' statement
- 12 Extracts from Crashmap UK
- 13 DMRS Extract Volume 5 Section 1 Part 3
- 14 Mrs Dawn Norman's Statement
- 15 Extract from HS2 Rural Road Design Criteria
- 16 Ms Diane Carrigan's statement
- 17 Ms Susan Wood's statement
- 18 Mrs Christine Timons' statement
- 19 Mr Kevin Windle's statement
- 20 Request from Mr Hill

- 21 Queries from Mrs Timons
- 22 Further bundle of documents from Mr Hill
- 23 Cllr. Clive Jepson's statement and appendix
- 24 Statement of Common Ground (Noise)
- 25 INEOS Shale Traffic Management Plan Addendum 1
- 26 Inquiry Note: Noise fence and Green Belt issues prepared by Appellants
- 27 WHO Europe Night Noise Guidance
- 28 Extract from Appeal Report 3134386, 3130923, 3134385 and 3130924
- 29 Extract from gov.uk Guidance on Noise
- 30 Inquiry note prepared by Appellants on Detail of Noise Attenuation Fence
- 31 Further extract from Appeal Report 3134386, 3130923, 3134385 and 3130924
- 32 Letter and statement from Mr Bryan Limb
- 33 Cllr Andy Tickle's statement and appendices
- 34 Statement on behalf of Woodsetts Preschool
- 35 Cllr Tim Thornton's statement
- 36 Cllr. Jenny Whysall's statement
- 37 Cllr. Monica Carol's statement and appendices
- 38 Ms Fiona Hopkinson's presentation
- 39 Gov.uk Guidance on Planning Conditions
- 40 Letter to RMBC dated 18/11/2017 from Mr Richard Scholey
- 41 Extract from gov.uk guidance: Travel Plans. Transport Assessments and Statements
- 42 WAF closing submissions
- 43 RMBC closing submissions
- 44 Appellants' closing submissions
- 45 RMBS's response to Appellants' closing submissions
- 46 Costs application by Appellants
- 47 Response by RMBC to Appellants' costs application
- 48 Updated list of conditions (RMBC)
- 49 RMBC's Costs Response
- 50 Appellants' comments on RMBC's Costs response
- 51 WAF response to latest WMS

52 Appellants' response to latest WMS

PHOTOGRAPHS

- 1 Photograph of Dinnington Road
- 2 Photograph of Dinnington Road

**LIST OF CORE DOCUMENTS****1. Application Documents**

CD1.1	Document 1 Covering Letter
CD1.2	Document 2 Application Forms and Checklist
CD1.3	Document 3 The Proposals Explained
CD1.4	Document 4 The Proposal (June 2018)
CD1.5	Document 5 Application Plans
CD1.6	Document 6 Planning Statement
CD1.7	Document 7 Environmental Report
CD1.8	Document 8 Statement of Community Involvement
CD1.9	Document 9 Planning Statement Addendum

**2. National Legislation, Policy Documents and Guidance**

CD2.1	National Planning Policy Framework (February 2019)
CD2.2	National Planning Practice Guidance (Minerals)
CD2.3	Written Ministerial Statement on Shale Gas and Oil Policy, dated 16 September 2015
CD2.4	Written Ministerial Statement on Energy Policy, dated 17 May 2018
CD2.5	IEA Guidelines for the assessment of Road Traffic
CD2.6	Extracts from Manual for Streets (pages 74, 79, 91, 92)
CD2.7	Extracts from Manual for Streets 2 (pages 007, 008, 009, 075)
CD2.8	Guidance: Ancient woodland, ancient trees and veteran trees: protecting them from development (Gov.uk) <a href="https://www.gov.uk/guidance/ancient-woodland-and-veteran-trees-protection-surveys-licences#ancient-woodland">https://www.gov.uk/guidance/ancient-woodland-and-veteran-trees-protection-surveys-licences#ancient-woodland</a>
CD2.9	English Nature (now Natural England) Badgers and Development (2002)
CD2.10	National Planning Policy Framework: Equality Impact Assessment (July 2018)
CD2.11	Section 149 of the Equalities Act 2010
CD2.12	Environment Agency (2006). Guidance on the Installation of Groundwater Quality Monitoring Points. Science Report SC020093.
CD2.13	Institute of Air Quality Management (2017) Land-Use Planning & Development Control: Planning For Air Quality.

CD2.14	Institute of Air Quality Management (2014) Guidance on the assessment of dust from demolition and construction.
CD2.15	Environment Agency Waste Management Paper 3 (WM3)
CD2.16	Landscape Institute and Institute of Environmental Management and Assessment (2013) Guidelines for Landscape and Visual Impact Assessment. 3rd Edition. Routledge.
CD2.17	Noise Policy Statement for England, DEFRA, March 2010
CD2.18	British Standard 5228-1: 2009 + A1: 2014: Code of practice for noise and vibration control on construction and open sites – Part 1: Noise
CD2.19	British Standard 8233: 2014: Guidance on sound insulation and noise reduction for buildings
CD2.20	World Health Organisation (WHO) Guidelines for Community Noise (1999). Extract Executive Summary page i – xix.
CD2.21	WHO Night Noise Guidelines for Europe (2009). Executive Summary (page V1 to XVII) and page 59.
CD2.22	WHO Environmental Noise Guidelines for the European Region (2018)
CD2.23	ISO 9613-2 Acoustics – Attenuation of sound during propagation outdoors (1996)
CD2.24	BSI 2014. BS 4142:2014 Methods for rating and assessing industrial and commercial sound
CD2.25	Section 9A of the Petroleum Act 1998
CD2.26	BSI 2003. Description and measurement of environmental noise BS 7445-1:2003. Extract, pages i to 8.
CD2.27	BS 7445 Part 3 1991 (ISO 1996-3:1987) reporting requirements include meteorological conditions during the measurements (wind direction, wind speed, relative humidity and recent precipitation).

### **3. Development Plan and Evidence Base**

CD3.1	Rotherham Core Strategy 2013 – 2028 (adopted September 2014)
CD3.2	Site and Policies Document (adopted June 2018)
CD3.3	Rotherham Landscape Character Assessment and Landscape Capacity Study (2010)
CD3.4	Rotherham Local Plan: Sites and Policies Document. Integrated Impact Assessment (IIA) Report 2015 (March 2016)

### **4. Correspondence with LPA (including additional information submitted)**

CD4.1	Screening Request Covering Letter (24 July 2017)
CD4.2	Screening Opinion from RMBC (04 October 2017)
CD4.3	Screening Direction Request (20 December 2017)
CD4.4	Screening Direction Response from Secretary of State (29 December 2017)
CD4.5	Letter to RMBC responding to consultation responses (16 July 2018)
CD4.6	Letter to RMBC responding to comments from WAF (21 August 2018)
CD4.7	Breeding Bird Survey (June 2018)

## 5. Inquiry Documents

CD5.1	Statement of Common Ground between Appellant and Rotherham Metropolitan Borough Council
CD5.2	Statement of Common Ground between Appellant and Woodsetts Against Fracking
CD5.3	Rotherham Metropolitan Borough Council Statement of Case
CD5.4	INEOS Statement of Case
CD5.5	Woodsetts Against Fracking Statement of Case Under Rule 6

## 6. Consultation Responses

CD6.1	RMBC Highways Department (25 June 2018)
CD6.2	RMBC Environmental Health Department (01 August 2018)
CD6.3	Health and Safety Executive (undated)
CD6.4	WAF Objection RB2017/1577
CD6.5	WAF Objection RB2018/0918
CD6.6	Bolsover Parish Council Response
CD6.7	Natural England Response
CD6.8	Environment Agency response
CD6.9	Public Health England (refer to committee report – no formal response received)
CD6.10	South Yorkshire Archaeology Service (SYAS) (18 July 2018)
CD6.11	Historic England (05 July 2018)
CD6.12	Coal Authority (29 June 2018)
CD6.13	Firbeck Parish Council (10 July 2018)
CD6.14	Letwell Parish Council
CD6.15	Yorkshire Water Company

CD6.16	Severn Trent Water Company
CD6.17	Woodsetts Parish Council (14 July 2018)
CD6.18	Woodland Trust (18 July 2018)
CD6.19	RMBC Landscape Officer Memorandum (04 July 2018)
CD6.20	Fracking and Historic Coal Mining: Their relationship and should they coincide (Professor Emeritus Peter Styles)
CD6.21	South Yorkshire Mining Advisory Service (SYMAS) response (27 June 2018)

## 7. Other Points of Reference

CD7.1	Planning Regulatory Board Report (September 2018)
CD7.2	Planning Regulatory Board Report (March 2018)
CD7.3	RB2017/1577 Decision Notice (09 March 2018)
CD7.4	Environment Agency Standard Rules Permit (no. EPR/FB3503KK) (18 December 2017)
CD7.5	Validation Notice (13 June 2018)
CD7.6	Planning Regulatory Board Report (14 March 2019)
CD7.7	RB2018/0918 Decision Notice
CD7.8	APP/P4415/W/17/3190843 Common Road, Harthill Appeal Decision
CD7.9	Europa Oil & Gas Judgement [2014] EWCA Civ 825
CD7.10	APP/U1050/W/17/3190838 Bramley Moor Lane, near Marsh Lane Appeal Decision
CD7.11	AECOM Review of Traffic and Transport Matters January 2019
CD7.12	Bramley Moor – EAF docs HW1 and HW2
CD7.13	Extracts from Transport Statistics for Great Britain 2016
CD7.14	Stephenson v SoSHCLG [2019] EWHC519 (Admin), 06 March 2019
CD7.15	Appeal A: Appeal made by Cuadrilla Bowland Limited Exploration Site on land that forms part of Plumpton Hall Farm, West of the farm buildings, north of Preston New Road, off Preston New Road, Preston, Lancashire. LPA ref. LCC/2014/0096. Appeal Ref. APP/Q2371/W/15/3134386. Extract page 315, paragraph 12.215.
CD7.16	Non-Residential Coal Mining Report, The Coal Authority (CON29M)
CD7.17	(1) Samuel Smith Old Brewery (Tadcaster) (2) Oxton Farm V (1) North Yorkshire County Council (2) Darrington Quarries Ltd [2018] EWCA Civ 489

CD7.18	Appeal decision: Land west of Enifer Downs Farm and east of Archers Court Road and Little Pineham Farm, Langdon. Appeal Ref APP/X2220/A/08/2071880. 16 March 2009
CD7.19	Bat Survey Report (12 October 2017)
CD7.20	Generic Risk Assessment for Standard Rules set number SR2015 No 1
CD7.21	The Transport Assessment, Travel Plans and Parking Standards Good Practice Guidance by Rotherham Council
CD7.22	Official Journal of the European Communities 25th June 2002. DIRECTIVE 2002/49/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 June 2002
CD7.23	HS2 23 February 2017. High Speed Two Phase 1 Information Paper E23 Control of Construction Noise and Vibration Version 1.7
CD7.24	URS October 2014. Evidence and Usage of LOAEL, SOAEL etc. Final report 47067932.NN14-05 R1/03 prepared for Defra
CD7.25	Cuadrilla Bowland Ltd 29th May 2014. Temporary shale gas exploration at Preston New Road Lancashire Environmental Statement Volume 1 – Main Document Figure 4.2 – Indicative Project activity sequences.
CD7.26	Agility Acoustics August 2018. Proposed Shale Gas Exploration Site on Land off Dinnington Road, Woodsetts, South Yorkshire Review of Environment Report (Noise)
CD7.27	Airshed 8 <sup>th</sup> April 2019. Environmental Noise Baseline Survey
CD7.28	Airshed 16th April 2019. Additional Noise Predictions for Construction of Site Access Track and Vehicles on Access Track

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# Department for Levelling Up, Housing & Communities

[www.gov.uk/dluhc](http://www.gov.uk/dluhc)

## RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

## SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

### Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

## SECTION 2: ENFORCEMENT APPEALS

### Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

## SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

## SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.