Appeal Decision

Inquiry opened on 13 November 2007
Site visit made on 14 November 2007

by B Barnett **BA MCD MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

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Decision date:
7 July 2008

Appeal Ref: APP/Q2500/C/07/2039818
Norton Bottoms Quarry, Norton Disney, Lincolnshire, LN6 9JN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by C & G Concrete Ltd against an enforcement notice issued by Lincolnshire County Council.
- The Council's reference is ENF/065/2006.
- The notice was issued on 30 January 2007.
- The breach of planning control alleged in the notice is failure to comply with a condition of a planning permission Ref N.47/367/82 granted on 20 January 1986.
- The development to which the permission relates is *to extract sand and gravel in accordance with the revised details received by the Mineral Planning Authority on 7 September 1982 and 12 August 1985*.
- The condition in question is No 7 which states that:
  No operations authorised or required under this permission shall be carried out, other than with the written agreement of the Mineral Planning Authority, except between the following times:
  0700 hours to 1800 hours Monday to Friday
  0700 hours to 1200 hours Saturday
  and no such operations shall be carried out on Public Holidays.
- The notice alleges that the condition has not been complied with in that *operations have taken place at the site without the written agreement of the Director of Highways and Planning, outside the hours specified by condition 7.*
- The requirement of the notice is to:
  Cease operations authorised or required by planning permission N47/367/82 dated 20 January 1986, other than with the written agreement of the Mineral Planning Authority, except between the following times:-
  0700 hours to 1800 hours Monday to Friday
  0700 hours to 1200 hours Saturday
  and cease such operations on Sundays and Public Holidays.
- The period for compliance with the requirement is one day.
- The appeal is proceeding on the grounds set out in sections 174(2) (a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Whether the notice is a nullity also falls to be considered.

Summary of Decision: The appeal is allowed on ground (g) only and the notice is upheld with correction and variation. A new planning permission is granted without the disputed condition but with alternative conditions.

Applications for costs

1. At the inquiry applications for costs were made by the Council and the appellants against each other. These are the subject of separate decisions.

Preliminary matters

2. The inquiry sat on 13-14 November 2007, 16-18 January 2008, 19-21 May 2008 and 10 June 2008. Evidence was given under oath.

3. In closing submissions, Counsel for the appellants produced two tables purporting to summarise the evidence in relation to BS4142 calculations. As these tables contain several figures which were not given in, and could not be readily inferred from, the evidence and which have not been explained or subjected to the scrutiny of cross-examination, I have ignored them.

The site

4. The 1986 planning permission authorised the establishment of a sand and gravel quarry and construction of a private haul road to take vehicles between the quarry and the A46. The quarry has since expanded, with the land involved in the extraction of material being extended under a series of later permissions, each of which affected a discrete area of adjacent land.

5. Extraction of material from the area affected by the 1986 permission ceased some time ago, but this area continues to be a key part of the quarry. The staff accommodation is located there; sand and gravel is processed and stockpiled there; and processed material is despatched from there.

6. In 1988 permission was given for a concrete batching plant in the area affected by the 1986 permission. This has been operational for some time.

7. There are several dwellings in the area north and west of the quarry. These are protected from noise by a high bund which runs along the northern edge of the quarry and the north side of the section of haul road closest to the quarry. There is a gap in the bund where a farm access crosses the haul road. Until recently there was a second gap north of the processing plant but this has now been filled. There is no protective bund from where the haul road crosses a minor road to where it meets the A46.

8. The enforcement notice relates to most of the area affected by the 1986 planning permission but not to the haul road other than a short section at its eastern end.

Validity of the notice

9. The appellants argued that the notice is a nullity as the word ‘operations’ in both the allegation and the requirements is insufficient to identify clearly what is alleged to have occurred and what must be done.

10. To be valid, it is not necessary for an enforcement notice to specify the allegation or the requirement in detail. All it must do is tell a person on whom a copy of it is served fairly what he has done wrong and what he must do to remedy it. It must do this on its face without the need to refer to other documents.

11. In this case, copies of the notice were served on the appellants and on HSBC Bank Ltd. Both have an interest in the site. They are familiar with, or are in a position to find out, what goes on there. The meaning of the word ‘operations’ was readily discernable by them. They merely had to ask themselves what, if

anything, is going on outside the permitted hours within the area affected by the notice. The fact that the notice does not apply to most of the haul road, or for that matter to the rest of the quarry, is of no consequence. 'Out of hours' activity within the area affected by it clearly comprised, and comprised only, water pumping, maintenance work, the loading of heavy goods vehicles (hgv's) with sand and the movement of hgv's in connection with the despatch of sand and gravel. The water pumping and maintenance work have been agreed to by the Mineral Planning Authority. However, the other activity has not been, and there can have been no genuine doubt in the mind of anyone with knowledge of the site that this activity is addressed by the allegation and the requirement of the notice. This is indeed confirmed by the specific reference to 'vehicular movements and operations' in the reasons for issuing the notice.

12. I have no doubt that the notice was sufficient on its face to tell those served with a copy of it and familiar with the site what they are alleged to have done wrong and what they must do to remedy it. I conclude that it is not a nullity.

13. The wording of the allegation and the requirement is wider than the matters about which, on the evidence, the Council is concerned. It could be interpreted as applying to operations other than the movement and loading of hgv's, e.g. the digging of sand or its processing, if any such operations had been taking place or were to take place in the future. This is a defect but, having regard to the judgement in *Miller Mead v Minister of Housing and Local Government*, I consider that it does not go to the substance of the matter. It is correctable and I shall correct the notice to refer only to the movement of hgv's and the loading of sand. This will cause no injustice.

Ground (c)

14. At the inquiry the appellants' planning witness accepted that the loading of hgv's with sand is an 'operation' within the meaning of condition 7. I agree. This activity is occurring 'out of hours'. If it is controlled by the 1986 permission, there is no dispute that this constitutes a breach of the condition.

15. They argued that the present movement of hgv's is not controlled by the 1986 permission so none of the conditions attached to that permission apply to it. Alternatively, if the 1986 permission does apply, the movement of hgv's is not an 'operation' within the meaning of the term in condition 7. Although the point was not put expressly, if they are right in their first argument, it would follow that the loading of sand would also not be controlled by the 1986 permission.

16. This permission authorised more than just the operational development of extracting material from the ground and building a haul road. It also authorised a material change in the use of the land to use as a quarry. This use encompasses a range of activities essential to the basic purpose of digging up material and supplying it to others elsewhere, including the processing of the material, its loading into hgv's and the movement of hgv's needed to take the material from the site. These are all necessary elements of quarrying activity. The fact that provision was made for the construction of a haul road puts the matter, in my judgement, beyond doubt. The 1986 permission authorised the loading of hgv's and their movement within the site as part of the overall use of the land as a quarry.

17. As the quarry has expanded, the planning unit has grown in area but its use remains that of a quarry and concrete batching plant. The only planning permission relevant to quarry use within the area affected by the enforcement notice is the 1986 permission. I agree with the appellants' planning witness that, even though the extraction of material has ceased in this area, it is still the 1986 permission which authorises processing and despatch activities there as part of the continuing use of the land as a quarry. In my judgement, this permission also authorises the loading of hgv's. These operations are, therefore, controlled by the conditions attached to that permission.

18. In this context, I attach no significance to the erection of the processing plant. S 75 of the Town and Country Planning Act 1990 states that planning permission for the erection of a building shall be construed as including permission for the use for which it is designed, but only if no purpose is specified in the grant of permission. The grants of permission (in the Town and Country Planning General Development Order 1977 and later Orders) involved in the permitted development rights exercised in relation to the processing plant specified the purpose of the plant, as the rights were only applicable where the plant was required in connection with the winning, working or processing of minerals. They related to operational development, and did not involve any change in the use of the land. The use remained that of a quarry and concrete batching plant authorised and controlled, in relation to quarry activity, by the 1986 permission.

19. For similar reasons, I also attach no significance to part 23 of the Town and Country Planning (General Permitted Development) Order 1995 which permits the removal of material from a stockpile. This relates to the operational development of digging up the material and has no bearing on the overall use of the land.

20. The appellants' planning witness accepted that, in the context of condition 7, the word 'operations' means more than just the digging of material from the ground. It includes the processing of extracted material and the loading of hgv's. I agree. I see no fundamental difference, however, between loading an hgv and driving it to the place of loading and from there out of the site and back for the next load. In my view, both are active processes or activities, and 'operations' within the meaning of the term in condition 7.

21. I conclude that the loading of hgv's with sand and their movement within the site in connection with the despatch of sand and gravel are controlled by the terms of the 1986 permission and that they are both 'operations' within the meaning of the term in condition 7 of that permission. The carrying out of these activities outside the hours specified in the condition is a breach of planning control. The appeal fails on ground (c).

Ground (d)

22. There is no dispute that movement of hgv's in connection with the despatch of sand and gravel has taken place within the site affected by the enforcement notice outside the hours allowed by condition 7. Records provided by the appellants show that 'late shifts' were being worked for most of the time from early December 1991 until 2006. At least three such shifts were worked in most weeks until 2000. From then until early October 2002 the number of late

shifts varied considerably from week to week and they then ceased altogether until March 2003. Following this break, there was a small amount of activity until late June 2003, with 8 late shifts worked over a 16 week period. Things then picked up with more drivers being involved and the number of late shifts worked increased. There are currently three drivers employed specifically to work late shifts moving sand and gravel.

23. Little information is available about the nature of these late shifts. Verbal evidence was given by one of the present drivers who has been at the site for about 3 years. He does three trips from the quarry on most days. The hgv's involved in his first two trips are loaded before 1800hr, but he often loads a vehicle himself with sand before the third trip and when this occurs it is after 1800hr. His time of return varies depending of where he has to deliver to and other factors, but is generally between 2230hr and 2330hr. On very rare occasions, he does not get back to the quarry until 0030hr.

24. An employee since 1996 described the current pattern of late shift operations and stated that most drivers return between 2300hr and midnight. However, I attach limited weight to this evidence as it is not based on personal experience. He finishes work around 1730hr and is not present when the last hgv returns.

25. A written statement from another employee indicates that in the last five years 'the general trend is for the last driver to have returned to the quarry between 2300hr and midnight'. However, this too is not informed by personal knowledge as he is based at Stamford. Similarly, the verbal evidence of the appellants' development manager that the last driver now usually returns to the site between 2315hr and midnight is not based on first hand experience as he is also based at Stamford.

26. No significant information was provided at the inquiry, or in writing, in relation to the nature of the work done on, or the finishing times of, the late shifts in the period before 2003.

27. Against this background, the appellants argued that it was too late to take enforcement action as condition 7 had been breached continuously for over ten years. *Nicholson v Secretary of State for the Environment (*1997) is relevant here. Although this judgement concerned a lawful development certificate appeal, it expressly considered the circumstances in which enforcement action can be taken and the manner in which the relevant time limits should be applied. It was stated that:

Enforcement action against a breach of condition is concerned with the particular breach in question. If non-compliance ceases by discontinuance of the offending activity or otherwise, that breach is at an end. The condition, however, will in an appropriate case continue in force. If there is subsequently renewed non-compliance, that would, in my judgement, be a fresh breach. The period for enforcement against that breach under Section 171B(3) will begin to run again.

28. The present breach of condition 7 began in late June 2003 when the current pattern of regular late shifts started. It certainly was not in existence between early October 2002 and the end of February 2003 when there were no late shifts at all. In coming to this conclusion, I regard as mere speculation, and attach no weight to, the appellants' assertion that during this period some

drivers on the day shift may have returned to the site after 1800hr in breach of condition 7. This it is not borne out by any records or by evidence based on first hand experience.

29. Whatever the nature of the breach, or breaches, which occurred before mid October 2002, it or they ceased at or before that date. Between early October 2002 and the end of February 2003 there was no breach of condition 7 against which enforcement action could have been taken. Although the condition was being breached between March 2003 and late June, this was not the same breach as occurred subsequently, as the number and frequency of late shifts were very different. The present breach has not been in continuous existence for ten years.

30. Even if I am wrong on this, the appellants have not shown that there was a particular breach of condition at any time which continued for ten years and so became immune from enforcement action. The condition was being breached at times, but there is nothing to show that this was in a consistent manner.

31. Before 2003 fewer drivers than now were employed on the late shift and the pattern of work may not have been the same as in recent years. There is no evidence that sand was being loaded then after 1800hr. There is nothing to show that three deliveries, or even two, were then the norm. There is no evidence about finishing times, and it is quite possible that these varied considerably. It is even possibly that at times the late shift finished before 1800hr and condition 7 was fully complied with. The specific breach of condition 7 occurring in one period may well have been so different from that occurring in another period as to amount to a different breach.

32. The judgement in *St Anselm Development Company Ltd v the First Secretary of State and Westminster City Council (16 June 2003)* made it clear that where a condition is capable of being breached to different degrees, and a particular breach has become immune from enforcement action, the right to take enforcement action against a more extensive breach has not been lost.

33. To show that a particular breach of condition 7 has existed for ten years the appellants would first have to define that breach by reference to a finishing time for, if it could be shown that a breach up to a particular time of day had become lawful, any immunity from enforcement action would extend only up to that time. They have failed to do this or to show that there was not a series of separate and different breaches each continuing for less than ten years. Their argument that condition 7 is unenforceable and cannot prevent 24/7 operation if it has been breached in any way over a ten year period, even if only up to 1900hr, is wholly inconsistent with the *St Anselm* judgement and with an earlier planning appeal decision involving the concrete batching plant (APP/Q2500/C/05/2002564).

34. Drawing these points together, I am not convinced, on the balance of probabilities, that any particular breach of condition 7 continued long enough for it to have become immune from enforcement action. In particular, it has not been shown that at any time the movement of hgv's or the loading of sand until 2300hr or later had been going on continuously for ten years. Even if, at some time, such immunity had been established, it would have ceased to be of any significance in 2002-3 when for a substantial period condition 7 was being

complied with. The onus of proof in ground (d) cases is on the appellants to demonstrate that immunity from enforcement action exists. They have failed to do this. On the evidence available, the breach of planning control addressed by the enforcement notice began in 2003. It is not too late to take enforcement action against it. The appeal on ground (d) fails.

Ground (a) and the deemed application for planning permission

The main issue

35. Condition 7 seeks to protect the living conditions of people near the quarry. It was agreed at the inquiry that the restrictions it imposes are reasonable and necessary in respect of most operations on the site, including the extraction, processing and internal movement of material. The appellants argued that there is no need for it to restrict the hours on week-days when hgv movements can occur or when sand can be loaded. However, they agreed that even these activities should not be allowed to occur after noon on Saturdays, on Sundays or on public holidays.

36. The Council accepted that the condition should be varied to allow the movement of hgv's and the loading of sand by electrically driven conveyor up to 2300hr Monday to Friday, but that these activities should continue to be banned between 2300hr and 0700hr.

37. The main issue before me is the effect on the living conditions of those living in two dwellings (Brills Farm and Brills Hill Bungalow) of noise generated by the movement of hgv's along the haul road between 2300hr and 0700hr Monday to Friday.

38. In assessing this, I have had regard to Policy C5 of the North Kesteven Local Plan which seeks to ensure that development does not adversely affect the amenities enjoyed by other land users to an unacceptable degree and to Policy M10 of the Lincolnshire Minerals Local Plan which seeks to minimise disturbance during mineral working.

39. Most of the noise affecting the dwellings comes from the hgv's after they have left the site affected by the enforcement notice. However, the noise they generate on the haul road is directly linked to them entering, leaving and manoeuvring within the site and so to the matter addressed by the notice.

Reasons

40. BS4142 *Rating industrial noise affecting mixed residential and industrial areas* provides the most relevant guidance on assessing the impact of noise in this case. Its use in assessing industrial noise is recommended in *Planning Policy Guidance Note 24 Planning and Noise Annex 3* (PPG24) and in BS8233 *Sound Insulation and Noise Reduction for Buildings - Code of Practice. Minerals Planning Statement 2 Annex 2* (MPS2) recognises its value in noise monitoring. It was agreed at the inquiry that the noise generated by sand loading and hgv movements within the site is industrial noise and that, for the purposes of the assessment, noise generated by sand loading can be ignored as insignificant in relation to that from hgv movements.

41. BS4142 sets out two ways to assess noise levels. The preferred method is direct measurement. Where this is not possible, for example because of the

influence of noise from other sources, a combination of measurement and calculation should be used. The direct measurement method involves separating the specific noise of the activity from the background noise and comparing the two. If this is to represent adequately what is experienced at the dwellings, the measurements used must be representative of a typical day or the influence of unusual features must be removed.

42. The Council's expert measured noise near the affected dwellings on 4 October 2007. On two occasions the noise when an hgv was passing after 2300hr was measured and there was one measurement of background between these events. Relative to measurements made on other occasions, the background noise observed was unusually high at 43.4 dB $L_{Aeq5min}$. This is likely to have been, in part at least, because of some exceptional weather conditions during the survey period. These conditions could have affected in different ways the noise from hgv movements and the background noise. It is not possible to identify and remove the impact of whatever gave rise to this unusual level of background noise and, because of this, the information obtained in this survey is not representative of typical conditions or a reliable basis on which to assess, using the direct measurement method, the impact of hgv movements.

43. At a joint survey on 13/14 February 2008, measurements were taken near the affected dwellings of noise on another two occasions when an hgv was passing after 2300hr. Several measurements were taken of the background noise before and after these events. The appellants' expert calculated an average background noise of 29 dB(A) $L_{A90\ 5\ mins}$. However, unusually, the noise measured near the dwellings actually fell during the short period when the two hgv's were passing. The lowest noise level recorded between 2055hr and 2355hr was during the passage of the second hgv. This is likely to have been due to a short period of exceptional weather or other conditions and, as with the October 2007 survey, these conditions could have affected in different ways the noise from the hgv movements and the background noise. The measurements taken during the passage of these hgv's are not typical of conditions near the houses and do not form a reliable basis for applying the direct measurement method of assessment.

44. Because of the deficiencies in the data used, I attach little weight to assessments carried out by the two noise experts using the measurement method and data collected on 4 October 2007 and 13/14 February 2008 respectively. In my judgement, with the information available the alternative calculation method outlined in BS4142 is the most appropriate and robust method of assessing the impact of hgv movements after 2300hs.

45. This method requires several variables to be input into a formula set out in BS5228. The Council told me that the most appropriate figures to use for this are those derived from the joint survey on 13/14 February 2008 and set out in the second Statement of Common Ground (SCG). This contains figures for the speed of an hgv at key points on the haul road, for its sound power level (other than at the road crossing), and for the background noise level at Brill Farm before midnight. It was agreed that these accurately reflect what was experienced during the joint survey. It emerged in evidence that there is also agreement on the background noise level at Brills Farm after midnight. There is disagreement over the background noise level at Brills Hill Bungalow and

over whether the sound power of an hgv at the road crossing should be assessed as a point or a line source.

46. The appellants did not accept that the figures in the SCG represented 'typical' conditions, or endorse them for use in BS4142 calculations, but were unable to suggest any specific alternatives, advising me to have regard to a range of figures derived from surveys carried out on 4 and 10 October 2007, 13/14 February 2008 and 12/13 May 2008.

47. As indicated above I have serious misgivings about the figures derived from the Council's 4 October 2007 survey. I have similar concerns in relation to the appellants' survey on 10 October 2007. Mist was recorded after about 2215hr and I was told that this would have increased the noise levels experienced. After 2300hr, although the mist was no longer visible, the general level of noise increased. Although noise levels generally fall as the evening and night progress, the average $dB(A)_{LA90}$ between 2301hr and 2356hr was higher than in any earlier hour after 1900hr. It is evident that this survey was affected by unusual weather conditions. It is impossible to identify and remove the effect of these and, as a result, the background noise measurements taken then are not representative of typical conditions in the area and are unsuitable for use in BS4142 calculations.

48. The appellants' noise expert carried out a survey on 12/13 May 2008. This was done to establish a Noise Exposure Category (NEC) in relation to PPG24. No evidence was given as to how data recorded then could be used in a BS4142 calculation. Several measurements of noise after 2300hr in the absence of hgv movements were provided, but no indication was given in evidence as to whether these were appropriate for use in a BS4142 calculation and, if so, how one should derive from them a single representative figure for background noise which could be used in the calculation. Because of this, I consider that the information from this survey is of little value in making a BS4142 calculation.

49. Of the four surveys commended to me by the appellants, I find that done jointly on 13/14 February 2008 provides the most appropriate figures in relation to background noise for a BS4142 calculation. Although during the short period when two hgv's passed between 2314 and 2324hr there appear to have been unusual weather conditions, several measurements were taken outside this period when there is nothing to suggest that the background noise was other than typical of that experienced in the area at night.

50. Data from this survey also has the advantage that representatives of both sides were present, or nearby, when it was recorded. This minimises the risk that it was affected by technical problems, such as poor calibration or siting of equipment, or by external factors which were not properly recorded. Because of this, and because of the absence of evidence that data recorded at other times is more representative, I consider that the figures derived from the 13/14 February 2008 survey and set out in the SCG in relation to hgv speed and sound power levels are the most appropriate to use in a BS4142 calculation.

51. During the surveys, incidents were recorded when two hgv's travelled along the haul road within a five minute period after 2300hr. There is nothing to suggest

that this is unusual. It is possible that three or more hgv's could return to the site within a five minute period, particularly if an increase in the number of drivers employed on the late shift occurs as it did around 2003. In assessing the impact of noise on those living in the affected dwellings, it is appropriate to consider the effects of one, two and three hgv movements within a five minute period.

52. Using the data from the 13/14 February 2008 survey, the appellants' evidence is as follows.

Number of hgv's in 5 minutes	Specific noise level at Brills Farm	Impact relative to 27 dB_{LA90} background 2300hr to 0000hr	Impact relative to 26 dB_{LA90} background 0000hr to 0014hr
1	34 $dB_{LAeq\ 5mins}$	7	8
2	37 $dB_{LAeq\ 5mins}$	10	11
3	38 $dB_{LAeq\ 5mins}$	11	12

Number of hgv's in 5 minutes	Specific noise level at Brills Hill Bungalow	Impact relative to 29 dB_{LA90} background 2300hr to 0000hr	Impact relative to 28 dB_{LA90} background 0000hr to 0015hr
1	34 $dB_{LAeq\ 5mins}$	5	6
2	37 $dB_{LAeq\ 5mins}$	8	9
3	38 $dB_{LAeq\ 5mins}$	9	10

53. The specific noise levels for two or more hgv's passing within five minutes would exceed 35dB, so BS4142 is applicable. Using these figures and the advice in BS4142, two hgv movements within a five minute period after 2300hr are likely to give rise to complaints from people living at Brills Farm. However, in my judgement the figures do not fully reflect the scale of the impact likely.

54. BS4142 states that certain acoustic features can increase the likelihood of complaints arising from any particular noise. Where one or more of such features occur, a correction of 5dB should be made to the specific noise level. In this case, there is evidence that on occasions empty hgv's travelling over the speed bumps emit a distinct bang or clatter. Whether this occurs on any individual occasion will depend, in part, of the manner in which the hgv is being driven. However, the fact that it sometimes does not occur does not detract from the fact that on occasions it is likely to be very noticeable. Its very irregularity is likely to increase the extent to which this banging or clattering attracts attention.

55. In my judgement, the nature of the hgv noise at the crossing is such that, applying the advice in BS4142, a 5dB correction should be made to the calculated specific noise level. This would produce a rating level for 2 hgv's at Brills Bungalow of 42 and result in an impact between 2300hr and 0000hr of

+13. The noise of even a single hgv on the haul road after 2300 would be likely to give rise to complaints from both Brills Farm and Brills Hill Bungalow.

56. Against this background, I attach little significance to the disagreement between the parties over the assessment of noise at the crossing as either a line or a point source and over the background noise level at Brills Hill Bungalow. The line source method favoured by the Council would increase the rating and impact levels by 1 and the Council's preferred background noise level would add another 2 to the impact level figures for Brills Hill Bungalow. These differences are insignificant in the context of the impact identified above.

57. I conclude that even a single hgv using the haul road between 2300hr and 0000hr would disturb unacceptably the peace and quiet of those at Brills Farm and Brills Hill Bungalow at a time when they are likely to be getting ready for bed or asleep and have a reasonable expectation of not being disturbed. It is of little significance that no complaints have been received from them. There may be personal or other reasons for this. It is in the interests of the public and of future residents that the impact of noise on the living conditions of those in these houses is controlled.

58. This conclusion is consistent with the advice in MPS2 that noise experienced at sensitive properties should not be allowed to exceed the background level by more than 10dB(A) unless achieving this would impose an unreasonable burden on the mineral operator. In coming to it, I have attached no weight to what the appellants describe as their 'PPG24 Assessment'. This covers the night time only and is not a proper basis for determining an NEC. In any event, the NEC procedure is only applicable where consideration is being given to introducing residential development into an area with an existing noise source, rather than, as here, where a new noise source is being introduced into an existing residential area. As BS4142 is applicable and provides an adequate means of assessing whether noise outside the affected dwellings is likely to give rise to complaints from people residing within them, I see no need to assess separately the noise experienced within the dwellings or to give any weight to the very general guidance provided by the World Health Organisation.

59. Allowing hgv's to return after 2300hr would not significantly benefit traffic flow on the A46 or other roads in the area. The Company's development manager stated in evidence that they could accommodate without difficulty a ban on hgv movements after midnight. Having to reorganise their activities so that all hgv's can return to the site before 2300hr would inconvenience them, but I have no reason to believe that it would cause them significant difficulty. The benefit which working after 2300hr would produce for the appellants would not outweigh the harm which would be caused to local residents.

60. The appellants argued that if hgv movements after 2300hr were judged to cause unacceptable noise, this could be reduced to an acceptable level by removing the road humps or by ensuring that no more than one hgv uses the haul road in any five minute period after 2300hr. I disagree.

61. No assessment has been made of the noise implications of removing the speed humps. Even if this was sufficient to remove the need for a +5dB correction to the calculated specific noise levels, complaints would still be likely and the

effect of noise on residents' living conditions would still be unacceptable. In addition, there has been no assessment of the effect of removing the humps on the flow of traffic and it may have unacceptable consequences for road safety.

62. Limiting to one the number of hgv's returning within a five minute period would be insufficient to reduce the noise to an acceptable level. Moreover, a condition requiring this would be unenforceable in practice. It is unlikely that a reliable recording system could be set up and it is unrealistic to expect Council officers to carry out regular late night monitoring. I see no means of ensuring that the appellants would be in a position to secure compliance with such a condition, as a driver arriving at the entrance to the haul road would not see an hgv which had returned two minutes before him and so would be unable to assess the need to wait. It is unlikely that this difficulty could be overcome reliably by the provision of radios. Even if they were provided, maintained and used, a recently arrived driver who is parking, or has just left his vehicle, is unlikely to respond promptly to a call from a following driver.

Conclusion – ground (a) and the deemed application

63. I see no reason to disagree with the Council and the appellants that Condition 7 should be relaxed to allow hgv movements and sand loading up to 2300hr. The appeal succeeds on ground (a) to that extent.

64. I have found that unacceptable harm would be done to the living conditions of nearby residents if hgv movements are allowed to continue between 2300hr and 0700hr and that this harm could not be avoided or reduced to an acceptable level by removing the speed humps or restricting the frequency of hgv movements. I conclude that, insofar as condition 7 prevents these movements and the closely related activity of sand loading between 2300hr and 0700 hr, it is both necessary and reasonable. In this respect, the appeal on ground (a) fails.

65. I will grant a new planning permission retaining most of the conditions from the previous one but removing the restriction on hgv movements and sand loading before 2300hr Monday to Friday.

66. Under the terms of condition 7, the Council has agreed to plant maintenance and water pumping occurring at any time. There is no justification now for restricting these activities or requiring their further authorisation and I shall exclude them from the restriction on when operations can occur. I will not, however, exclude from this restriction activities needed to deal with emergency situations or for the security of the site as it is unclear to me what such activities might entail. These are matters best dealt with separately and I will retain the provision in condition 7 allowing specific operations to be agreed by the Mineral Planning Authority.

67. I will uphold the enforcement notice as the new planning permission will not authorise operations, other than maintenance and water pumping, between 2300 and 0700hr and I have found that these have occurred and should not be allowed to continue. The effect of S180 of the Town and Country Planning Act 1990 is that the notice will cease to have effect insofar as it is inconsistent with the new permission.

Ground (f)

68. The appellants claim that the notice should particularise the operations which are to cease and not refer to all operations. I have indicated above that I intend to correct the notice to refer only to the movement of hgv's and the loading of sand. With this correction to both the allegation and the requirement, the notice will require no more than is necessary to remedy the specific breach of planning control identified by, and of concern to, the Council. The appeal on ground (f) fails

Ground (g)

69. The combined effect of upholding the enforcement notice and granting a new, less restrictive, permission is that the appellants will have to make arrangements to ensure that all hgv's leave the site early enough for them to return by 2300hr. This may involve alteration to the timing of deliveries already agreed with customers and is likely to take more than a day to accomplish. I am not convinced, however, that it will take three months as suggested. I shall extend the period allowed by the notice to one month as it seems to me that this would be sufficient time to make the necessary arrangements. The appeal succeeds on ground (g).

Formal decision

70. I direct that the enforcement notice be corrected by deleting the phrase 'because operations have taken place' from the allegation and substituting the phrase 'because the loading of heavy goods vehicles with sand and the movement of such vehicles in connection with the despatch of sand and gravel have been taking place' and by deleting the word '*operations authorised or required by planning permission N47/367/82 dated 20 January 1986, other than with the written agreement of the Mineral Planning Authority*' from the requirement and substituting the phrase 'to load heavy goods vehicles with sand and to move such vehicles in connection with the despatch of sand and gravel'.

71. I allow the appeal on ground (g), and direct that the enforcement notice be varied by the deletion of 'one day' and the substitution of 'one month' as the period for compliance.

72. Subject to this correction and variation, I uphold the enforcement notice.

73. I allow the appeal on ground (a) and grant planning permission, on the application deemed to have been made under section 177(5) of the 1990 Act as amended to extract sand and gravel in accordance with the revised details received by the Mineral Planning Authority on 7 September 1982 and 12 August 1985 at Norton Bottoms/Grove Farm, Norton Disney without compliance with condition number 7 previously imposed on planning permission Ref N.47/367/82 dated 20 January 1986 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new conditions:

    1) *Other than the movement of heavy goods vehicles, the loading of heavy goods vehicles with sand by an* electrically *driven conveyor, the pumping of water, the maintenance of plant and equipment and other operations*

authorised in writing by the Mineral Planning Authority, no operations authorised or required under this permission shall be carried out except between the following times:

0700 hours to 1800 hours Monday to Friday
0700 hours to 1200 hours Saturday.

2) No movement of heavy goods vehicles or loading of heavy goods vehicles with sand by an electrically *driven conveyor shall take place except between the following times:*

0700 hours to 2300 hours Monday to Friday
0700 hours to 1200 hours Saturday.

3) *No operations authorised or required under this permission, other than the pumping of water, the maintenance of plant and equipment and other operations authorised in writing by the Mineral Planning Authority, shall be carried out at any time on Sundays or public holidays.*

B Barnett

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

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Mrs J Davis BA MRTPI	Davis Planning Partnership, 17A Post House Wynd, Darlington, DL3 7LP
Nr N Scargill	C & G Concrete Ltd
Mr A S Jowett	C & G Concrete Ltd
Mr R Simpson	C & G Concrete Ltd

FOR THE MINERAL PLANNING AUTHORITY:

Mr John Edmond	Solicitor, Marrons, 1 Meridian South, Meridian Business Park, Leicester, LE19 1WY
He called	
Mr R Watson BEng CEng MIOA MAES MIEEE	Blue Tree Acoustics
Mr N McBride BA DipURP MRTPI	Planning Services Team Leader, Lincolnshire County Council
Mr T Collis BSc CertPE	Senior Planning Enforcement Officer, Lincolnshire County Council

INTERESTED PERSON:

Mr C Jones	Chestnut View, Main Street, Norton Disney, LN6 9JU

DOCUMENTS SUBMITTED AT THE INQUIRY

Evidence

Document	1	Addendum proof from Mr Watson
Document	2	2nd statement of Mr Jowett
Document	3	Revised proof from Mr Norman
Document	4	Rebuttal proof from Mr Norman
Document	5	Revised second noise impact assessment from Mr Norman
Document	6	PPG24 Assessment from Mr Norman

Data

Document	7	Table of noise measurements and related plan from Mr Watson
Document	8	Table of noise calculations from Mr Watson
Document	9	Tables of noise calculations from Mr Norman
Document	10	Graph of noise measurements from Mr Norman
Document	11	Table of drivers/nights

Other documents

Document	12	Statement of Common Ground May 2008
Document	13	Draft condition
Document	14	Statement from Mr T M Seddon
Document	15	Tables submitted in closing by Mr Horton

PLANS SUBMITTED AT THE INQUIRY

Plan	A	Plans and covering letter relating to the 1986 permission