



Neutral Citation Number: [2026] EWHC 2138 (Admin)

Case No: AC-2025-LON-004137

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/08/2026

Before :

MR JUSTICE CHAMBERLAIN

Between :

HAMBLE PARISH COUNCIL

Claimant

- and -

**(1) SECRETARY OF STATE FOR HOUSING,
COMMUNITIES AND LOCAL
GOVERNMENT**

(2) CEMEX UK OPERATIONS LIMITED

(3) HAMPSHIRE COUNTY COUNCIL

Defendants

Ben Fullbrook (instructed by **Leigh Day**) for the **Claimant**
Matthew Fraser (instructed by the **Government Legal Department**) for the **First Defendant**
James Strachan KC (instructed by **Clyde & Co**) for the **Second Defendant**

Hearing date: 16 June 2026

Approved Judgment

This judgment was handed down remotely at 10:30am on 11 August 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Chamberlain:

Introduction

1. Cemex UK Operations Ltd (“Cemex”) applied for planning permission to extract sand and gravel from the Former Hamble Airfield in Hampshire. The application was refused by Hampshire County Council. Cemex appealed to the Secretary of State, who appointed an Inspector, Stephen Normington. He conducted a public inquiry. Hamble Peninsular Defence Group (“HPDG”) was represented and argued that the proposed development should be refused, inter alia because Cemex had failed to demonstrate beyond reasonable scientific doubt that the proposed development would have no adverse effect on the integrity of European and Ramsar sites. The appeal was allowed.
2. By this claim, Hamble Parish Council (one of the constituent members of the HPDG), challenges the Inspector’s decision under s. 288 of the Town and Country Planning Act 1990 (“TCPA 1990”) on three grounds:
 - (a) The Inspector adopted an unlawful approach to the question whether Natural England (“NE”) had considered the evidence before the Inquiry and/or whether NE’s advice was based on an incorrect factual premise (ground 1).
 - (b) The Inspector misunderstood the law in relation to the correct approach to NE’s advice (ground 2).
 - (c) The Inspector’s conclusion that there was no reasonable scientific doubt about the possibility of adverse effects on the integrity of the European Sites was irrational (ground 3).
3. Lang J refused permission on the papers on 20 February 2026. The application was renewed before me at a hearing on 16 June 2026.

Background

4. In his decision letter, the Inspector described the site as follows:

“14. The appeal site is a former airfield, located in the village of Hamble and borders Hamble Lane to the west, Satchell Lane to the east, the railway line to the north, and various residential roads and the Roy Underdown Pavilion and green to the south. Hamble railway station lies to the north-west corner.

15. The site comprises generally flat open land, covered with scrub vegetation, with some mature trees and hedgerows on the boundaries. Although in private ownership, parts are used for informal recreation, particularly along the eastern boundary. The nearest residential properties to the site are those in Hamble Lane, Satchell Lane and properties to the south in areas such as Astral Gardens and Tutor Close. There are two schools nearby comprising The Hamble School to the north of the site and Hamble Primary to the south-west along Hamble Lane.

16. There are no landscape, ecological or historical designations covering the site. The nearest ecological designations are the Badnam Copse Site of Importance for Nature Conservation which adjoins the site boundary to the north-east, the Solent and Southampton Water Ramsar Site, Lincegrove and Hackett's Marshes Site of Special Scientific Interest (SSSI), Solent Maritime Special Area of Conservation (SAC) and Solent and Southampton Water Special Protection Area (SPA), which are located approximately 300 metres to the east of the site adjacent to the River Hamble."
5. A key issue which arose at the Inquiry concerned the effect of the proposed development on the hydrology of the site and on the habitats and species which depend on it. HPDG called expert hydrology evidence from Dr Tony Clothier and expert ecological evidence from Mr Richard Andrews. HPDG summarised that evidence in its closing submissions as follows:
- "Dr Clothier's evidence is that the River Terrace Deposits (sand and gravel) currently in place on the Site act as an aquifer which stores rainwater, allowing it to gradually discharge into the streams. This sustains flows into the streams potentially for weeks or months after rainfall. This effect was referred to in evidence as a 'shallow' hydrograph (relatively slow flow rate over long duration). During the operation and restoration of the Site the River Terrace Deposits ('RTD') will be removed and replaced by inert infill. This will not store water in the same way, meaning that it will discharge into the streams at a much faster rate (a day or two). This effect was referred to as a 'steep' hydrograph (relatively high flow rate over a short duration). Groundwater may also be directed to different streams than previously.
- Mr Andrews' evidence is that the change from a shallow to a steep hydrograph could adversely affect habitats and species which depend, directly or indirectly, on the existing hydrology (i.e. the sustained freshwater flow), water quality and salinity in the areas where the streams flow into the European Sites, due to the loss of the sustained flow (or changes in the rate of flow) of freshwater into the European Sites."
6. Cemex called its own expert hydrology evidence from Dr Rachel Dewhurst and expert ecology evidence from Mr Danny de la Hey. Their reports were to the effect that development would have negligible impacts on protected sites.
7. When the application was initially made, NE had written to Hampshire County Council on 3 March 2022, saying this:

"Hydrology Impacts

The water environment and flood risk chapter of the Environmental Statement (December 2021), (paragraph 8.9.4) notes that the designated sites along the foreshore of the River Hamble and Southampton Water are associated with brackish and estuarine waters, which will be negligibly affected by any small reduction in groundwater flow as a result of the onsite works. We would draw your attention to the Lincegrove and Hackett's marshes SSSI, which shows a natural transition from unimproved pasture

through to saltmarsh, and therefore could potentially be impacted by changes to groundwater flows.

While we tentatively agree with the Environmental Statement’s conclusion in that changes in hydrology are unlikely to impact nearby designated sites, we would advise further consideration of this SSSI in particular informs your decision making.”

8. On 24 May 2022, Stantec (Cemex’s expert consultancy) responded to NE making a number of points. NE summarised them in a letter to Hampshire County Council on 21 March 2023 as including the following:

“the relatively small flow of groundwater towards the northeast would enter the Badnam Creek and flow into the Hamble. This would prevent any impacts occurring at the Lincegrove and Hackett’s Marshes SSSI which lies beyond the creek.” (Emphasis added.)

9. On this basis, NE did not object. In a letter dated 25 September 2024 to the Planning Inspectorate, they reiterated that position in the appeal.
10. In his proof of evidence for the Inquiry, Mr Andrews said: “Stantec and Natural England should both know that Lincegrove and Hackett’s Marshes SSSI does not lie ‘beyond the creek’; rather, the tidal creek is an integral part of the SSSI”. There was a map showing this.
11. At the Inquiry itself, Dr Dewhurst accepted in cross-examination that she did not know how different the hydrograph would look after the development. She clarified in re-examination that she did not believe the development would have any material effect on the hydrograph. Mr de la Hey accepted that Cemex had not carried out any surveys of the locations where the streams flow into the European sites to establish what habitats and species might be present there or the extent to which they might rely on the sustained freshwater flows from the streams.
12. One issue was whether the absence of any objection from NE was based on an incorrect factual premise, namely, that the SSSI lay beyond Badnam Creek.
13. On 30 June 2025, after the conclusion of evidence but prior to hearing closing submissions, the Planning Inspectorate wrote to NE in these terms, without copying in the parties:

“The letter from Natural England to the Planning Inspectorate, dated 25 September 2024, identified that no objections to the proposed development were raised subject to the securing of the embedded measures agreed under this scheme to mitigate against increased noise and visual disturbance on Solent SPA birds. These measures are in the form of perimeter bunds and screening detailed in the documents identified in the letter.

The Inspector seeks your views on the following:

1. Does Natural England remain content that the proposed mitigation measures are sufficient to avoid an adverse impact to the integrity of the European Sites and relevant features? If you are not content, then please specify your reasons and provide details of any additional measures you consider are necessary.
 2. Any other relevant matters that you wish to make.”
14. NE responded that they had no further comments to make.
15. HPDG’s written submissions included this:
- “...all we really know about NE’s position is that, at the point at which it believed Badnam Creek to be in the SSSI, NE was not prepared to rule out the possibility of adverse effects from groundwater flows. It is this view that should be given significant weight. Everything that NE said about this issue subsequently was based on an incorrect factual premise and this amounts to a cogent reason for departing from those views (as in any event does the evidence heard by this Inquiry).”
16. The Inspector’s conclusions about the weight that could be attached to NE’s view, as set out in his decision letter, were as follows:
- “129. On 25 September 2024, Natural England provided a letter addressed to the Planning Inspectorate to represent their advice on the Hamble Airfield application, following ongoing work with the Council. This advised that the content of the letter should be recognised at any forthcoming appeal as Natural England’s revised and current position on the proposed development. The letter advises that Natural England have no objections to the appeal scheme. It further confirms that there would be no adverse effect on the integrity of any of those National Networks Sites with the secured embedded mitigation measures proposed...
130. There is some suggestion by HDPG [sic] that Natural England would not have had the benefit of hearing the evidence that was presented in the Inquiry at the time it made comments prior to the opening of the Inquiry. The Inquiry was livestreamed. In addition, the Inquiry website, containing all of the Core Documents, Inquiry Documents and Proofs of Evidence, was maintained by the Council throughout the Inquiry process and was publicly accessible.
131. I also consulted Natural England following the closure of the oral aspects of the Inquiry. The response dated 28 July 2025, advised that Natural England had no further comments to make following their response to the Planning Inspectorate dated 25 September 2024. I have no evidence to indicate the extent to which Natural England availed itself of the Inquiry evidence and the live streaming of witnesses. However, such information was publicly available. I have no reasons to doubt the content of the response dated 28 July 2025.

132. Natural England have therefore advised prior to the opening of the Inquiry, and following its closure, that it is satisfied that the proposed development would not have any adverse effects on the integrity of the Protected Sites with the embedded mitigation proposed.

133. In my role as ‘competent authority’ my attention was drawn to relevant case law regarding the weight that can be attached to the views of Natural England. In the case of *R (Wyatt) v Fareham Borough Council* [2022] EWCA Civ 983 at [9] (4) Sir Keith Lindblom stated that ‘A competent authority is entitled, and can be expected, to give significant weight to the advice of an “expert national agency” with relevant expertise in the sphere of nature conservation, such as Natural England ... The authority may lawfully disagree with, and depart from, such advice. But if it does, it must have cogent reasons for doing so’. This also follows the judgement in the case of *R (Morge) v Hampshire County Council* [2011] UKSC 2; [2011] 1 WLR 268 Lord Brown at [30] stated that ‘Where, as here, Natural England express themselves satisfied that a proposed development will be compliant with article 12, the planning authority are to my mind entitled to presume that that is so’.

134. The Appellant contends that it has therefore been established by the highest level of authority (namely the Supreme Court) that not only may I rely upon the views of Natural England where it has satisfied itself a proposed development will have no such adverse effect, but I am entitled to presume no such adverse effects in reliance upon Natural England’s assessment. In light of the judgements in the cases above, I have no reason to doubt the Appellant’s view, nor do I have any contrary evidence in that respect. Therefore, I have attached significant weight to the views of Natural England in the determination of this appeal.”

17. The Inspector, having heard expert evidence on both sides, made detailed findings about the hydrology impacts of the proposed developments. These included the following:

“148. The Revised Restoration Plan seeks to ensure that the post-restoration contours of the appeal site would mimic the flows for the original water catchments. As such, the same flows of water would head to the same springs that currently exist and the revised restoration plan is designed to ensure that the water infiltrates into the surrounding area at the same rate and in the same locations as those which currently exist on the appeal site, taking full account of the presence and infiltration rate of the artificially enhanced geological barrier (‘AEGB’) that would line the voids for the inert restoration material.

149. Run-off from the areas of infill would be captured in the proposed attenuation basins and discharged to ground within infiltration features located on the undisturbed river terrace gravels at the outer parts of the appeal site. The rate of soakaway would be controlled by the natural ground conditions that are unchanged in that area, with water held in the drainage features until it soaks away. In my view, it is unlikely this would materially change the timing of any flow to the springs.

150. The nature of the operation and restoration would ensure that there would be no material change, let alone any significant change, to the groundwater flow to springs in the vicinity of the appeal site which, in turn, discharge into the relevant water bodies. In any event, it is clear that any such flows from those springs into those waterbodies are insignificant compared with the volume of freshwater in those bodies.

151. On the basis of the evidence provided, I am satisfied that the flows from the springs identified are very small in terms of flows into the National Network Sites. The borehole data demonstrates that groundwater from the river terrace deposits on the site is likely to be limited seasonally. Therefore, in summer periods with little rain, it cannot be water in the river terrace deposits that is feeding the springs in the surrounding area. In addition, flow times through the appeal site to the springs is likely to be days and months, thereby limiting discharge of groundwater to those springs for any prolonged period after rainfall.

152. I accept that in the operation period, there is a notional potential to have some impact on the flows to the springs, but these are unlikely to be material effects given (amongst other things) the lack of groundwater in the river terrace deposits seasonally and, in any event, the planned recharge of any groundwater removed from the extraction voids into the undisturbed ground adjacent to any extraction area.

153. I recognise that some habitats in the vicinity of the streams may be dependent on freshwater flows from the streams. However, such flows are already subject to seasonal and somewhat unpredictable variation, particularly in the light of climate change. Even if the scheme were to have a material effect on the flow to the springs themselves, any such effects would not constitute a likely significant effect on any of the National Network Sites, let alone an adverse effect on the integrity of those sites.

154. The Appellant's evidence suggests that even if the water discharge from the appeal site to the springs, and the spring discharge were to cease altogether it is extremely unlikely that the effect would be significant in the context of the wider Protected Sites. Any groundwater that is disturbed on the site during extraction would be recharged into the site and recharge the ground through the natural soils and undisturbed river terrace deposits that are not being worked during the relevant operation phase. The same would happen with the drainage arrangements on restoration controlling the soakaway with infiltration features.

155. As set out above, the unchallenged evidence identifies that the appeal site represents less than 0.2% of the catchment into these waterbodies. Flows from the springs into the National Network Sites are inundated by vast amounts of tidal seawater twice daily. Therefore, I do not consider that the streams are crucial to the dilution of nutrients in the waterbodies and I have no contrary evidence regarding this matter.

156. The spring flows, even on the most precautionary assessment, are in fact less than 0.1% of that flow. During both operation and in restoration, recharge to the natural ground to those springs is an inherent part of the design. Whilst there may be some variation of flows from the appeal site into the springs, in terms of an altered hydrograph, this would likely be a far smaller percentage (even if it were to occur at all) and would be even more inconsequential in terms of the flows into the River Hamble.”

18. The Inspector concluded at para. 170 that: “the hydrological regime associated with the appeal site would not be materially impacted through the development and that freshwater flows would not be impacted materially or significantly.”

Legal framework

19. Reg. 63(1) and (1A) of the Conservation of Habitats and Species Regulations 2017 (SI 2017/1012: “the Regulations”) requires a “competent authority” (including for these purposes the Secretary of State acting through a planning inspector), before deciding to give permission for a “plan or project” which is “(a) likely to have a significant effect on” a European site or Ramsar site and “(b) is not directly connected with or necessary to the management of that site”, to “make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives”.
20. Regulation 63(3) requires the competent authority to “consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies”. In this case, the appropriate body is NE. Regulation 63(5) provides that the competent authority may agree to the plan or project only after having “ascertained” that it will not adversely affect the integrity of the European site or the Ramsar site.
21. The extensive case law interpreting these provisions was summarised by Sir Keith Lindblom SPT (with whom Males and Singh LJ agreed) in *R (Wyatt) v Fareham Borough Council* [2022] EWCA Civ 983, [2023] Env LR 14, at [9]. The material parts of that summary are as follows:

“(1) Whether a plan or project will adversely affect the integrity of a European protected site under regulation 63(5) is always a matter of judgment for the competent authority itself... That is an evaluative judgment, which the court is neither entitled nor equipped to make for itself... In a legal challenge to a competent authority’s decision, the role of the court is not to undertake its own assessment, but to review the performance by the authority of its duty under regulation 63. The court’s function is supervisory only...

...

(3) When reviewing the performance by a competent authority of its duty under regulation 63, the court will apply ordinary public law principles, conscious of the nature of the subject-matter and the expertise of the competent authority itself. If the competent authority has properly understood its duty under regulation 63, the court will intervene only if there is some *Wednesbury* error in the performance of that duty... When exercising

its supervisory function, the court will apply the normal *Wednesbury* standard, not a heightened standard such as ‘anxious scrutiny’... Given the demanding requirement inherent in regulation 63(5) – for the competent authority to ascertain that the project ‘will not adversely affect the integrity of the European site’ – the court's examination of the authority’s performance of its duty will be suitably exacting within the bounds of its jurisdiction...

(4) A competent authority is entitled, and can be expected, to give significant weight to the advice of an ‘expert national agency’ with relevant expertise in the sphere of nature conservation, such as Natural England... The authority may lawfully disagree with, and depart from, such advice. But if it does, it must have cogent reasons for doing so... And the court for its part will give appropriate deference to the views of expert regulatory bodies...

(5) When provided with expert evidence in a claim for judicial review, the court will not substitute its own opinion for that of the expert... Experts may be expected to provide enough explanation to enable the court to decide whether the views they have stated are based on a conspicuous error... But the court will bear in mind that decisions which entail ‘scientific, technical and predictive assessments by those with appropriate expertise’ and which are ‘highly dependent upon the assessment of a wide variety of complex technical matters by those who are expert in such matters and/or who are assigned to the task of assessment (ultimately by Parliament)’ should be accorded a substantial margin of appreciation...”

...

(7) The duty placed on the competent authority by... regulation 63 is to ascertain that there will be no adverse effects on the integrity of the protected site, but that conclusion does not need to be established to the standard of ‘absolute certainty’. Rather, the competent authority must be ‘satisfied that there is no reasonable doubt as to the absence of adverse effects on the integrity of the site concerned’...

(8) The requirement that there be ‘no reasonable doubt as to the absence of adverse effects on the integrity of the site concerned’ does not mean that the ‘reasonable worst-case scenario’ must always be assessed... What is required in law is a sufficient degree of certainty to ensure that there is ‘no reasonable doubt’ on the relevant question. It may sometimes be useful to consider a ‘reasonable worst-case scenario’ when assessing whether the necessary degree of certainty has been achieved. But whether there are grounds for ‘reasonable doubt’ will always be a matter of judgment in the particular case...”

22. In *R (Together Against Sizewell C Ltd) v Secretary of State for Energy Security and Net Zero* [2023] EWHC 1526 (Admin), [2023] Env LR, at [108], Holgate J said this:

“The level of reasoning which the law expects of a decision-maker disagreeing with the view of an expert body may depend upon whether that view is an unreasoned statement or assertion, or a conclusion which is

supported by an explanation and/or evidence. It may also depend upon the nature of the subject-matter. Some advice may not call for reasoning and/or supporting evidence, other advice may do.”

23. More generally, in *Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government* [2014] EWHC 654 (Admin), [2017] PTSR 1283, at [19], Lindblom J set out seven principles governing the proper approach to applications under s. 288 of the TCPA 1990. They include these:

“(1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to ‘rehearse every argument relating to each matter in every paragraph’...

(2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the ‘principal important controversial issues’. An inspector’s reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration...

(3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A local planning authority determining an application for planning permission is free, ‘provided that it does not lapse into *Wednesbury* irrationality’... to give material considerations ‘whatever weight [it] thinks fit or no weight at all’... And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector’s decision...” (Emphasis added.)

24. These principles were affirmed by the Court of Appeal in *St Modwen Developments Ltd v SSCLG* [2017] EWCA Civ 1643, [2018] PTSR 746 at [6].

Ground 1

25. Under ground 1, Ben Fullbrook for the claimant submitted that it was a breach of the Inspector’s *Tameside* duty not to ask NE directly to confirm that it had actually considered the evidence presented to the Inquiry or whether it had previously been proceeding on an incorrect factual premise: see *Secretary of State for Education v Tameside Metropolitan Borough Council* [1977] AC 1014.
26. In assessing this ground, it is important to recognise that the only duty imposed by the Regulations is the duty in reg. 63(3) to “consult” NE. It is common ground that the Inspector did consult NE. There was no statutory duty to take positive action to draw any particular matters to NE’s attention. In those circumstances, a failure to gather

relevant evidence would be unlawful if and only if the failure were irrational: see *R (Balajigari) v Secretary of State for the Home Department* [2019] EWCA Civ 673, [2019] 1 WLR 4647, at [70]. The question for me is whether the procedural approach taken by the Inspector was arguably irrational. In my judgment, it was not.

27. First, the situation the Inspector was dealing with was far from unique. Statutory consultees frequently choose not to attend public inquiries. This means that they will not have a representative present to hear the witnesses giving oral evidence. There are, however, mechanisms by which the evidence can be made accessible to them and to others who do not physically attend. Here, not only were the key documents and proofs of evidence accessible on the Inquiry website, but the inquiry was also livestreamed. This meant that NE could, if it wished to do so, consider that evidence. It was for them to decide whether to avail themselves of the opportunity to consider documents posted on the inquiry website or livestreamed oral evidence.
28. Secondly, the claimant's case is premised on its own view that Cemex's experts' "concessions", as Mr Fullbrook described them, were critical. The difficulty with this is that Inspector's other findings make clear that he did not regard them to be so: see paras 148-156 of his decision letter (set out at [17] above). These passages make clear that he had reached his own view, having assessed the competing expert evidence, that the proposed development would not result in any material impact on the water flow into the springs which feed the streams flowing through the protected sites and, in any event, would not result in any material impact on the species and habitats associated with them.
29. Thirdly, the question for the Inspector was then how to deal with the claimant's point about the misconception underlying NE's view. Some inspectors might have chosen to take positive steps to draw the misconception to NE's attention. That does not, however, establish that the decision in this case was irrational. In this case, the Inspector was well aware of the claimant's point: see paras 129-134 of his decision letter (set out at [16] above). How to deal with it was a procedural matter which he was well-placed to decide, bearing in mind his other findings relevant to the materiality of the point. Choosing to consult NE again, but without drawing particular attention to a point which he plainly did not regard as material was well within the range of procedural options open to him.

Ground 2

30. Mr Fullbrook for the claimant submits under this ground that the Inspector fell into legal error in para. 134 of the decision letter (see at [16] above) by relying on a quotation from the judgment of Lord Brown in *R (Morge) v Hampshire County Council* [2011] UKSC 2, [2011] 1 WLR 268 at [30], which was not applicable to decisions under reg. 63 of the Regulations. In doing so, Mr Fullbrook argues that he wrongly saw the absence of any objection from NE as giving rise to a "presumption" that there would be no adverse effect on protected sites.
31. The difficulty with this is that the last sentence of the very paragraph Mr Fullbrook relies upon (para. 134), taken together with the preceding paragraph (para. 133), makes clear that the only point the Inspector took from *Morge* was that NE's view should be afforded "significant weight". Mr Fullbrook concedes that (subject to his ground 1, which I have found not to be arguable) this was correct.

32. Moreover, the remainder of the decision letter shows that the Inspector did in fact conduct his own careful analysis of the competing expert evidence and reached his own conclusion, quite separate from NE's view, that the impacts on protected sites would be immaterial. In those circumstances, there was no material misdirection of law. The contrary is not realistically arguable.

Ground 3

33. Under this ground, Mr Fullbrook submits that the Inspector's decision that there would be no significant adverse effect on the integrity of the European Sites arising from the hydrological effects of the proposed development was irrational. Reliance was placed on three points, set out at paras 42-44 of the claimant's skeleton argument for the permission hearing:
- (a) Dr Dewhurst's acceptance that she could not say what proportion of groundwater came from solid strata (which the Inspector assumed would act as an aquifer) rather than the River Terrace deposits ("RTD") and the fact that these solid strata would not continue to act in that way if RTD were replaced by impermeable infill.
 - (b) The Inspector erred in concluding that the site restoration plan would be "unlikely to materially change the timing of any flow to the springs" because "unlikely" was the wrong test, because Cemex's own evidence showed that water would travel overground and therefore enter the streams more quickly and because Dr Dewhurst's belief that the timing of flows into streams would not be affected was an inadequate basis for a conclusion to that effect.
 - (c) The Inspector could not rationally conclude that, even if the proposed development would have a material effect on the hydrograph, it would not have an adverse effect on the integrity of the European sites.
34. The general answer to these points is provided by the principles in *St Modwen* set out at [23] above. The Inspector did not have to deal with every point the claimant or HPDG's experts made. The claimant's complaints are, in reality, attempts to re-run arguments that were fully ventilated before the Inspector and which he plainly did not find persuasive.
35. As Mr Fullbrook noted, there were two parts to the Inspector's conclusions: first, that there was unlikely to be any material change to the water flow to the springs; and secondly, that—even if there were a material change in the freshwater hydrograph—this would not have an adverse effect on the European sites. Both conclusions were open to him and both were fully explained. The Inspector's careful reasons for reaching the conclusions he did were not only adequate to deal with the main points in dispute but, I think it fair to say, impressive and full.
36. The applicable test, which required the absence of any scientific doubt, was specifically referred to at para. 164. The Inspector's conclusion at para. 170 was fully in line with that test: "I have found that the hydrological regime associated with the appeal site would not be materially impacted through the development and that freshwater flows would not be impacted materially or significantly".

37. Ground 3 is not realistically arguable.

Conclusion

38. For these reasons, I agree with Lang J that none of the grounds of challenge is realistically arguable. Permission to apply for judicial review is therefore refused.