

Town and Country Planning Act 1990: Section 78  
Appeals

(i) Proposed western extension and  
consolidation scheme  
Appeal ref number APP/L6940/A/20/3265358

(ii) 'Section 73' time extension request  
Appeal ref number APP/L6940/A/21/3282880

Craig yr Hesg Quarry, Pontypridd

Hanson UK

Proof of Evidence in respect of Minerals  
Planning

**Graham Jenkins BA (Hons), MRTPI, MIQ**

**APP12/1**



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## 1.0 QUALIFICATIONS

- 1.1 My name is Graham Jenkins. I am employed as a Technical Director at SLR Consulting Limited (SLR) where I specialise in minerals planning.
- 1.2 I graduated with a BA (Honours) Degree in Town and Country Planning in 1980 and was elected as a member of the Royal Town Planning Institute (RTPI) in 1982. I became a member of the Institute of Quarrying in 1985. I have over 40 years' experience in minerals planning obtained through employment in local government, the minerals industry, and consultancy.
- 1.3 I was initially employed as a Minerals Planner at Hereford and Worcester County Council (1980-1986), where I was engaged in the full range of statutory development control and forward planning mineral functions including mineral and waste planning applications and appeals, the preparation of a draft Minerals Local Plan, and representing the County Council as a member of the West Midlands Regional Aggregates Working Party.
- 1.4 From 1986-1989 I was employed as a Senior Planner at RMC (now CEMEX) responsible for providing planning services to RMC's aggregates, concrete and industrial minerals companies throughout England and Wales.
- 1.5 From 1989 to the present time, I have been employed in consultancy, initially at Wyn Thomas and Partners as a Director of the Company with responsibility for developing the minerals and waste planning elements of the business. I continued in this role following a company merger in 2000 (Wyn Thomas Gordon Lewis Ltd), and more recently from 2005 via the acquisition of Wyn Thomas Gordon Lewis Ltd by White Young Green (WYG), now Tetrattech. I was employed as a Regional Director at WYG as head of the planning section of the WYG Cardiff Office, where I retained my specialism in minerals planning. I joined SLR in September 2011, where I have continued to be employed in a wide range of minerals consultancy work.
- 1.6 I have prepared and submitted over 150 environmental impact assessments (EIAs) for a range of mineral projects. I have also dealt with a large number of EIA's and applications associated with Environment Act Reviews of Old Mining Permissions (ROMP Reviews). I have presented evidence at numerous Section 77, 78 and 174 inquiries. I am therefore fully familiar with the minerals planning issues raised by the two cases.
- 1.7 I have been involved in planning projects at Craig yr Hesg Quarry since 2010, with the submission of an environmental impact assessment (EIA) / environmental statement (ES) in support of an Environment Act 'ROMP' Review application. I also project managed the preparation of the EIAs / ESs for the western extension application (2015), the western extension Supplementary ES (2021), and the Section 73 application (2021), together with applications for a revised quarry access and installation of a replacement asphalt plant (2013).

- 1.8 I am thus familiar with the planning and related issues at Craig yr Hesg Quarry and the issues associated with the proposed western extension and Section 73 time extension applications.
- 1.9 As a member of the RTPI I must abide by the Institute's Code of Professional Conduct which sets out the standards, ethics and professional behaviour expected of members. In that context, I confirm that my proof of evidence has been prepared in accordance with those requirements and that the opinions expressed represent my true and professional opinions.

## 2.0 SCOPE OF EVIDENCE

- 2.1 My evidence deals with the issue of need, mineral planning policy, and the planning balance in the context of both the development plan and national planning policy set out in Planning Policy Wales Edition 11 (PPW11), February 2021.
- 2.2 Another witness (Owen Jones) deals with the wider planning context provided by the Well Being of Future Generations Act (WBFGA) 2015 which provides the guiding principles for the content of PPW11. That evidence also reviews the ‘well-being goals’ defined in the WBFGA, and the sustainable development principles enshrined in the WBFGA and PPW11. I draw upon the content of that evidence as part of an overall planning balance which I undertake.
- 2.3 A key focus of my evidence is the consideration of the need for the development in terms of provision in the development plan and the context provided by the Regional Technical Statement (RTS). I also consider the planning policy context provided by the development plan (the adopted Rhondda Cynon Taff (RCT) Local Development Plan 2011, and wider national mineral planning policy requirements set out in PPW11 and Minerals Technical Advice Note 1: Aggregates (MTAN1).
- 2.4 My evidence is structured to deal firstly with the need for the development and planning policy which, subject to certain distinctions, is common to the issues associated with both appeals.
- 2.5 I then deal separately and sequentially with the planning issues associated with the two appeals which I refer to as the ‘*western extension appeal*’ and the ‘*Section 73 (S73) appeal*’. I summarise the issues raised during the processing of the applications; the assessment of the applications by the Planning Officer in his reports to RCT’s Planning & Development Committees; and the consideration of the applications by the Committees.
- 2.6 I then address the single reasons for refusing the respective applications, and, notwithstanding the reasons for refusal, I also consider the issues now raised in the ‘new case’ set out by RCT in their Statement of Case (SoC) and Supplementary Statement of Case (SSoC).
- 2.7 As part of my assessment, I draw upon two Statements of Common Ground (SsoCG), one for each appeal, which have been drafted between the Appellants and RCT.
- 2.8 I also review issues raised by Third Parties.
- 2.9 I have assumed that the background to, and the description of, the two developments is adequately set out in the Statement of Case (SoC) which accompanied the lodging of the western extension appeal, and in the SoC which accompanied the lodging of the non-determination S73 appeal, and the subsequent Supplementary Statement of Case (SSoC) submitted following the conversion of the non-determination appeal into an appeal against the refusal of the S73 application. This material is thus not repeated in my proof of evidence.





### 3.0 THE NEED FOR THE DEVELOPMENTS

- 3.1 This section sets out the position relating to mineral need in terms of:
- (i) the policy guidance provided by Minerals Technical Advice Note 1: Aggregates (MTAN1) and Planning Policy Wales Edition 11 (PPW11).
  - (ii) the managed mineral supply strategy of the Regional Technical Statements (RTS) and the resource provision to be made by RCT as their contribution towards aggregate supply.
  - (iii) the mineral provision made by the adopted development plan (RCT Local Development Plan 2011) consistent with the requirements of the RTS; and
  - (iv) general policy issues relating to aggregate supply which provide a context for, and which are relevant to, the sustainable development principles.

#### Minerals Technical Advice Note 1: Aggregates (MTAN1)

- 3.2 Minerals Technical Advice Note 1: Aggregates (MTAN1) confirms that the overarching objective of planning policy for aggregate provision is *“to ensure that supply is managed in a sustainable way so that the best balance between environmental, economic and social considerations is struck, while making sure that environmental and amenity impacts of any necessary extraction are kept to a level that avoids demonstrable harm to interests of acknowledged importance”* (reference paragraph 7).
- 3.3 It seeks to meet this objective via 5 principles of ‘sustainable minerals planning’ set out in the then Minerals Planning Policy Wales and reiterated in Planning Policy Wales Edition 11 (PPW11 - ref section 5.14). This includes the goal to provide aggregate resources in a sustainable way to meet society’s needs for construction materials in line with certain objectives which include *‘ensuring planning permissions for future primary extraction are essential and properly planned for in accord with the Regional Technical Statement (RTS) (reference MTAN1 ‘Principle A’)*.
- 3.4 MTAN1 highlights the limited availability of certain aggregates, such as high specification aggregates (HSA) for road construction that have the ability to provide particular levels of surface skidding resistance and durability. The Pennant Sandstone outcrop in South Wales, of which the mineral resource at Craig yr Hesg Quarry is a part, is identified as a resource of UK importance. Notwithstanding the ‘proximity principle’, transportation over long distances may be justified because of the national need for the provision of the specific type of material with limited availability (MTAN1 paragraph 42). The original RTS, 2008 (discussed below) further notes that this implies that, given suitable safeguards, additional levels of extraction to meet this particular need should be encouraged e.g., as a means of regenerating local economies.
- 3.5 In this respect, it is noteworthy that the aggregate produced at Craig yr Hesg Quarry has a Polished Stone Value (PSV) of +68 to 70 and an Aggregate Abrasion Value of <10, making it one of the highest quality sources of skid resistant road surfacing aggregate not only in South

Wales, but the UK. This makes it particularly suitable for major road surfacing projects such as motorways, interchanges and airport runways. The products, referred to as 'high specification aggregate' (HSA) are marketed over a relatively wide geographical area, including South Wales, central and southern England.

- 3.6 The importance of the HSA from Craig yr Hesg Quarry is evident from its use in the resurfacing of much of the central section of the South Wales Trunk Road Agent (SWTRA) network, including the M4, A465 (heads of the valleys road), A470, A48, and A4060. This has included the use of Craig yr Hesg aggregate to resurface and provide the final running surface for the M4 and M48 toll plaza location, upon removal of the toll booths.
- 3.7 Craig yr Hesg aggregate is also used in numerous local authority contracts, including, Rhondda Cynon Taff, Swansea, Neath Port Talbot, Blaenau Gwent, Torfaen, and Monmouthshire.
- 3.8 Further afield in England, Craig yr Hesg aggregate has been used to resurface large sections of the M4, M5, A46, A303, A30, A38, A34 for National Highways (formerly known as Highways England), recently including a new interchange on the M49 in Avonmouth, designed to support the expansion of the major logistics hub.
- 3.9 MTAN 1 also provides advice on the landbank of permitted reserves which should be maintained for aggregates, with a reference to a minimum 10-year landbank for crushed rock to be maintained during the entire development plan period (para 49).
- 3.10 This requirement has been embraced by the adopted RCT Local Development Plan (LDP) where Policy CS10 includes a commitment to contribute to the local, regional and national demand for a continuous supply of minerals, without compromising environmental and social issues by *'maintaining a minimum 10 year landbank of permitted rock aggregate reserves throughout the plan period together with an extended landbank in the form of a Preferred Area of Known Mineral Resource'*. The 'preferred area of known mineral resources' referred to in LDP Policy CS10 comprises land to the west of Craig yr Hesg Quarry which forms the basis of the western extension application and appeal, as discussed further below.
- 3.11 MTAN1 also confirms that the Pennant Sandstone in South Wales should be treated as a **'special case'** in terms of supply, and where, as noted above, MTAN1 urges planning authorities to recognise the UK importance of the resource (ref para 42).

### Planning Policy Wales Edition 11 February 2011 (PPW11)

- 3.12 Like MTAN 1, PPW11 states that high specification aggregates are of importance to the UK and that *'the UK and regional need for such minerals should be accorded significant weight provided environmental impacts can be limited to acceptable levels'* (ref para 5.14.23).
- 3.13 PPW11 further confirms that it is *'essential to the economic health of the country that the construction industry is provided with an adequate supply of the minerals it needs'* (para 5.14.22).
- 3.14 In terms of ensuring supply PPW11 confirms that:

*‘Ensuring the sustainable supply of minerals is a strategic issue which plays a fundamental underpinning role in supporting non-minerals development. Each mineral planning authority should ensure that it makes an appropriate contribution to meeting local, regional and UK needs for primary minerals which reflects the nature and extent of resources in the area and their best and most appropriate use, subject to relevant environmental and other planning considerations. For aggregates this should be done under the aegis of the North and South Wales Regional Aggregates Working Parties, whose role is to provide a regional overview of supply and demand and through the framework provided by the Regional Technical Statements for Aggregates’ (ref para 5.14.10).*

3.15 It continues by noting that:

*‘The contribution that a resource could make to UK demand where the mineral is of limited or restricted supply or regional demand must be taken into account when taking planning decisions.....’ (ref para 5.14.11).*

3.16 This is of relevance to the HSA available at Craig yr Hesg Quarry, and the importance of the western extension in meeting UK demand, or in the short term via the S73 appeal, ensuring that the remaining permitted reserves are not sterilised.

3.17 PPW11 further requires that

*“where necessary planning authorities should provide a clear guide to where non-energy mineral extraction is likely to be acceptable.....(where) ..this approach brings a high degree of certainty to all. Policies and proposals should relate to identifiable areas of land unless there is good reason...(and)....should be clearly identified on a proposals map and should, in the following order of preference, take the form of:*

- *Specific Sites.....*
- *Preferred Areas which will be areas of known resources with some commercial potential and where planning permission might reasonable be anticipated.....*
- *Areas of Search....*
- *Other areas (ref para 5.14.19).*

As discussed below, the LDP Policy SSA25 ‘preferred area of known mineral resource’ equates to the second of these identifiable areas of land.

## **Regional Technical Statement (RTS)**

3.17 MTAN 1 requires the two Regional Aggregate Working Parties (RAWPS) in Wales to produce a Regional Technical Statement (RTS) to ensure that adequate supply can be maintained, taking into account the sustainability objectives set out in MTAN1. The relevant parts of the RTS should then be incorporated into the individual development plans of the respective Authorities (reference paragraph 50).

- 3.18 An initial RTS for the area covered by the South Wales RAWP was produced in October 2008. The RTS considered future demand in the region based upon the existing permitted reserves at the RTS base date (December 2005), using both existing consumption patterns and a ‘per capita’ / population approach. The regional assessment of demand was then ‘apportioned’ / subdivided between the constituent MPA’s as the minimum contribution towards regional aggregate demand which they should make via existing planned reserves and / or new allocations in their LDPs.
- 3.19 It is important to emphasise that the assessment of future requirements set out in the original RTS and subsequent revisions (discussed below) all assume the availability of the permitted reserves in existing quarries, including in this case the remaining permitted reserves in Craig yr Hesg Quarry.
- 3.20 In relation to RCT, the RTS concluded that early consideration should be given to the need to allocate additional reserves likely to be required in the later part of the 15-year plan period (ref recommendation in section 4.28).
- 3.21 Consistent with the context provided by the RTS, the adopted LDP (2011) makes provision for a western extension to Craig yr Hesg Quarry within a ‘preferred area of known mineral resources’ (ref Policy SSA 25).
- 3.22 A First Review of the RTS (RTS1) was published in August 2014 and provides a general strategy for the future supply of aggregates based on a minimum supply requirement of 25 years (the 15 year period of the RTS + 10 year minimum crushed rock landbank at the end of the 15 year period). It then includes recommendations to each Mineral Planning Authority regarding the minimum quantity of crushed rock aggregate which needs to be provided for within their area, and the total tonnage for any new allocations which need to be made in their Local Development Plans to meet that minimum provision.
- 3.23 These calculations are based upon average sales over a 10-year period (2000 - 2010) and the permitted reserves (landbank) available at 31st December 2010, again noting that for RCT this included the full permitted reserve at Craig yr Hesg Quarry.
- 3.24 Particular mention is made in RTS1 of ‘high specification aggregate’ (HSA) which serves different markets and is required for distribution over greater distances, notably the skid resistance aggregates derived from the Pennant Sandstone which are essential for road surfacing applications throughout England and Wales (ref RTS1 para 2.8).
- 3.25 In relation to circumstances in RCT, the South Wales Regional Annex to RTS1 does not differentiate between general rock aggregate from limestone quarries within RCT (Forest Wood and Hendy Quarry), and the high specification aggregate (HSA) from Craig yr Hesg but assumes combined ongoing sales of some 0.69m tonnes of rock per annum (sandstone and limestone). This results in a requirement as at December 2010 for a minimum provision of 17.25m tonnes of rock, calculated over the 25-year time horizon. When compared with a landbank of 13m tonnes at December 2010, this gave a residual requirement for a minimum allocation in the RCT LDP of 4.25m tonnes (again assuming the availability of the full permitted reserve at Craig yr Hesg).

- 3.26 The RTS1 Regional Annex further noted that a new permission for an extension to Forest Wood Quarry had been granted since December 2010, and a preferred area has been identified in the LDP (Craig yr Hesg). It thus concluded that the crushed rock shortfall is already covered by the permission and allocation and that no further allocations are specifically required by the RTS.
- (It is to be noted Forest Wood Quarry straddles the administrative boundary between RCT and the adjoining Vale of Glamorgan Council. The extension to Forest Wood Quarry referred to in RTS1 lay entirely within the administrative area of the Vale of Glamorgan. It was thus incorrect to state that reserves from a new permission in an adjoining Authority had assisted in addressing the identified reserve shortfall in RCT. In fact, only the RCT LDP 'preferred area' at Craig yr Hesg Quarry was relevant in meeting the RTS1 minimum required provision for RCT. This anomaly was addressed in RTS2 which calculated landbanks for each Authority based upon reserves present within the administrative areas of the respective Authorities).
- 3.27 MTAN1 requires the RTS to be reviewed at 5 yearly intervals, and a final version of an RTS Second Review (RTS2) was issued in October 2020. It was endorsed by the Minister on 24<sup>th</sup> March 2021, and when endorsed by the LPAs it will form the basis of mineral resource provision to be made in LDP reviews, noting that a LDP review for RCT is scheduled to progress during 2022.
- 3.28 RTS2 indicates an annual requirement for RCT of 0.753m tonnes of crushed rock, which for the 25-year provision period of RTS2 (15 years plus a minimum 10-year landbank at the end of the period), requires a minimum provision for RCT of 18.816m tonnes. With permitted reserves of 9.83m tonnes as at the RTS2 base date of 31st December 2016, this equated to a residual requirement to make an allocation for 8.986m tonnes of new crushed rock reserves in a review of the RCT LDP (if a 15 year replacement LDP were to have commenced from January 2017). It should be emphasised that the calculation included in RTS2 is based upon an availability of the full remaining permitted reserve at Craig yr Hesg Quarry. If a reserve of some 2.5m tonnes is sterilised at Craig yr Hesg by virtue of being unworked at December 2022, then the residual requirement identified in RTS2 would increase by circa 2.5m tonnes.
- 3.29 On 11<sup>th</sup> November 2021, Welsh Government issued an RTS2 Clarification Letter following the identification of an arithmetic error which affects the apportionment calculations for all authorities in the 'Former Gwent' sub region, and Cardiff and RCT in the 'Cardiff City' sub region. The effect for RCT was to increase the annualised apportionment from 0.753mt to 0.765mt, which results in an increase in the 25-year provision requirement from 18.816m tonnes to 19.125m tonnes, and an updated residual requirement to make a minimum allocation of 9.295m tonnes via a review of the LDP (as at the RTS2 base date of December 2016).
- 3.30 RCT had intended to revise the LDP with a new 10-year plan period commencing from 2020. However, as a result of delays, it is understood that it is now intended to stop the preparation of this revised Plan and commence the preparation of a Revised LDP with a 15 year plan period of 2022 to 2037.

- 3.31 Such a revised LDP will be required to make provision for a minimum 25 years supply of crushed rock aggregates at the beginning of the plan period (i.e. 15 years supply during the plan period plus a 10 year minimum provision in the form of permitted reserves or allocation(s) for future working at the end of the 2037 plan period). At the RTS2 annual apportionment of 0.765m tonnes, this will equate to a minimum requirement to make provision for 19.125m tonnes of crushed rock.
- 3.32 It should be further noted that the currently identified 9.295m tonnes residual requirement is a minimum required allocation as at the end of 2016. The replacement LDP for RCT is scheduled to commence from 2022, by which time the Authority's crushed rock landbank will have reduced by sales over the 5 year period from the position at the end of 2016, noting that no new permissions for the release of crushed rock reserves have been issued by RCT in that period.
- 3.33 It follows that the release of the 10m tonne reserves within the western extension area at Craig yr Hesg Quarry would make a substantial contribution towards meeting these forecasted future needs. The position also re-enforces the importance of ensuring that the existing permitted reserves at Craig yr Hesg Quarry are fully utilised in making a contribution to supply requirements (via either the consolidating western extension application or the S73 Time extension), with added importance at Craig yr Hesg in terms of the HSA which the quarry provides and the 'significant weight' which PPW11 indicates should be afforded to this (PPW11 para 5.14.23).
- 3.34 As at the date of drafting this proof, all authorities in North Wales have formally endorsed RTS2, as have the majority in South Wales. However, in correspondence with representatives of RCT in relation to draft SsoCG, it has been confirmed that 'the Council has not sought to endorse the Regional Technical Statement 2, given the ongoing uncertainty of the future of Craig Yr Hesg'.
- 3.35 This is an unsatisfactory approach for RCT to take. There may be uncertainty regarding the future of Craig yr Hesg Quarry pending the outcome of the two appeals, but this is not a reason for RCT to fail to endorse RTS2 and the principle of meeting its share of regional aggregate supply. It is also the case that the notwithstanding the two appeals, there is no 'uncertainty' about the quarry in planning policy terms given the identified 'preferred area' in the adopted LDP. If RCT fail to endorse RTS2 then this would be an abrogation of collective Local Planning Authority responsibility in terms of the managed supply of aggregate via the RTS and the requirement of MTAN1 for 'each Authority' to make a contribution towards aggregate supply (ref MTAN1 para 5.4.10).
- 3.36 It is also a transparent attempt by RCT to assist its case at the Craig yr Hesg inquiry by avoiding any commitment to meeting future need for crushed rock aggregate. This is at best disappointing given the commitment of other Authorities to meeting the RTS2 requirements, but it also underlines the Authority's attitude to resisting future quarrying at Craig yr Hesg, with the reasons for refusal of the two planning applications being rather secondary to that position.

- 3.37 Finally, in terms of the landbank of permitted reserves of crushed rock aggregate, the South Wales Aggregates Working Party (SWAWP) published a 2019 Annual Report in May 2021 setting out information on sales and reserves as at 31st December 2019.
- 3.38 The Report indicates a landbank of permitted reserves in RCT of 11 years as at December 2019 based upon average sales over a 3-year period (2017 – 2019), or 12 years based upon average sales over a 10 year period (2010 – 2019). (The actual reserve figure and average sales in RCT over these periods is not included in the Annual Report since the figures are combined with reserves and sales in Merthyr Tydfil CBC).
- 3.39 These landbank figures at December 2019 expressed in years are the most recently published landbank figures, although with sales in 2020 and 2021 the landbank will have reduced over that period as part of a consistent trajectory of a of a gradually declining landbank which is not being replenished.
- 3.40 Permitted reserves within RCT expressed in tonnes as at the end of 2020 were 6.98 m tonnes, comprising a reserve of 3.33m tonnes at Craig yr Hesg Quarry and 3.65m tonnes at Forest Wood Quarry (based upon Annual Monitoring returns to RCT provided by Hanson). As above, by December 2022, the permitted reserve will have reduced further by sales in 2021 and 2022. If permission is not granted for the western extension or S73 time extension, then the landbank will be further reduced in December 2022 by the removal from the landbank of all remaining reserves at Craig yr Hesg Quarry (estimated at that stage as some 2.5m tonnes).
- 3.41 If that were to occur then, at that stage, the landbank of permitted reserves would be confined to the remaining reserves at Forest Wood Quarry, which, depending on sales from that Quarry during 2021 and 2022 would be something less than the 3.65m tonnes present at the end of 2020. This contrasts with an RTS2 requirement to make provision for a minimum of 19.125m tonnes of crushed rock. In this scenario, the remaining reserve will be present within just one quarry within RCT (Forest Wood), producing limestone, with no available reserves of high PSV sandstone in RCT.
- 3.42 Applying the RTS2 annual apportionment figure to a permitted reserve of less than 3.6m tonnes at the start of the LDP Review period from December 2022 would give a starting landbank of some 4.5 years.
- 3.43 This would evidently be very substantially below the MTAN1 requirement to maintain a landbank of at least 10 years throughout the life of the development plan, and, as discussed below, would be contrary to policy CS10 in the adopted RCT LDP.
- 3.44 This is a compelling reason to supplement the landbank via the release of additional reserves at the western extension appeal site. At a lesser scale in terms of reserves, it is also a compelling reason to ensure that the currently permitted remaining reserves at Craig yr Hesg are not sterilised from December 2022 and thereby removed from the landbank, particularly in the context of the HSA quality of the reserves involved.

### RCT Local Development Plan (LDP)

- 3.45 The content of the LDP is discussed in section 5.0 below but suffice to note here that in the context of the advice on aggregate resource requirements set out in the original RTS (2008)

and cross referenced in RTS1 (2014), the adopted LDP (2011) makes provision for a western extension to Craig yr Hesg Quarry as a means of meeting RCT's contribution towards long-term future aggregate supplies (ref Policy SSA25 and the identification of a 'preferred area of known mineral resources'). Implicit in that provision, and of relevance to the S73 appeal, is a continuation of operations at Craig yr Hesg Quarry beyond December 2022

- 3.46 In the shorter term, the LDP also includes a commitment to maintain a landbank of permitted crushed rock reserves sufficient for at least 10 years (policy CS10). The current landbank position falls short of that minimum landbank requirement (using the assumptions in para 3.39 above), and the shortfall would be exacerbated if the remaining reserves at Craig yr Hesg Quarry are sterilised from December 2022 (ref paragraphs 3.40 – 3.41 above).



## 4.0 MINERALS PLANNING POLICY

### The Development Plan

- 4.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 introduced a requirement that planning applications should be determined in accordance with the development plan, unless material considerations indicate otherwise. This principle has continued through subsequent planning policy iterations, and as discussed below, is at the heart of the most recent version of PPW11.
- 4.2 The development plan in relation to the appeal site is the Rhondda Cynon Taf Local Development Plan (LDP) adopted in March 2011 (CD7.3).
- 4.3 As part of the preparation of the LDP, Hanson promoted an extension to Craig yr Hesg quarry as a candidate 'preferred area' for future quarrying on the basis that reserves at the existing quarry were likely to be exhausted during the Plan period, and additional reserves needed to be released to allow continuity of production of this important aggregate material. These representations were noted within a 'Minerals Background Paper December 2009' (CD 7.1) (hereafter referred to as the Paper), which formed part of the LDP evidence base and which aimed to give detailed clarification of, and outline the evidence behind, the formulation of the Deposit Plan's mineral policies.
- 4.4 The Paper confirmed that the Craig yr Hesg extension area was the only land that came forward as a Candidate Site for future mineral extraction, as an extension to the only working quarry in RCT producing High Specification Aggregate (HSA). In contrast to the prospect of allocating the candidate site, the Paper further confirmed that *'allocation of a site for a new quarry was not considered a viable option for the LDP. This was due firstly to the lack of any private proposals for such a use, and, moreover, due to issues surrounding allocating such a use in comparison to an extension of an established quarry which is considered in MPPW para 41'* (which noted that 'extensions to existing mineral workings are often more generally acceptable than new greenfield sites').
- 4.5 The Paper thus confirmed the proposed identification of land adjacent to Craig yr Hesg Quarry as a 'preferred area of known mineral resources' as proposed policy SSA26 (subsequently re-numbered as SSA25). This is the primary policy of the development plan with respect to the proposed western extension and the overall mineral supply strategy of the LDP, but it is also of relevance to the S73 time extension scheme. The phraseology of a 'preferred area of known resources' follows the terminology set out in PPW11 (para 5.14.19), which at the time of adoption of the LDP was set out as Welsh Government Policy in similar terms in Minerals Planning Policy Wales 2000 (para 14), as an area *'where planning permission might reasonably be anticipated'*.
- 4.6 The identification of the 'preferred area' as an extension to the existing Craig yr Hesg Quarry is predicated on the continued use of plant and infrastructure within the existing quarry, and the extraction of the remaining reserves within the existing quarry as part of an extension development. In identifying the preferred area, it must have been the case that RCT were content that operations within the existing quarry were acceptable in environmental terms

- and, as referred to below, could in principle continue to be regulated to within ‘*acceptable limits*’ for the circa 25 year duration of an extension development. Irrespective of the outcome of the subsequent western extension application, it is illogical for the Authority to have refused the S73 time extension application within the existing quarry where there would be no changes to implicitly acceptable operations.
- 4.7 The Paper also provided the context behind a proposed minerals safeguarding policy set out in policy AW14 which makes provision to safeguard the sandstone quarry at Craig yr Hesg from development that would affect their operations by defining a 200m buffer zone as shown on the Proposals Map drawn outwards from the existing quarry and proposed ‘preferred area’.
- 4.8 Similarly, the Paper provided the rationale behind a separate proposed Community Protection Buffer Zone (draft policy AW15) which intended to restrict mineral extraction within 200m of defined settlement boundaries or other established settlements. In effect, this was a quarry buffer zone in reverse with a zone drawn outwards from a settlement rather than outwards from a mineral working site. Objections to the policy were raised on behalf of Hanson at the LDP examination on the basis that the draft policy was not in accordance with the advice on buffer zones set out in MTAN1, and that it lacked the flexibility enshrined in the advice in MTAN1.
- 4.9 In contrast, representations were made in support of draft policy AW15 by opponents of the ‘preferred area’ to the effect that the Cefn Primary School playing fields should be included as part of the Glyncoch settlement boundary. If policy AW15 had been retained, the settlement buffer zone would have been drawn 200m outwards from the boundary of the school playing fields. This was not accepted by the Inspector, who in his report of the LDP examination (CD7.2) concluded in respect of the potential quarry extension development within the ‘preferred area’ that “*the assessment of the impact of such a development would necessarily be based on actual effects and not on policy lines. Continuing to exclude the playing field from the settlement would have no material effect on that assessment.*”
- 4.10 Overall, in respect of draft policy AW15, the Inspector concluded that “*rigid distances would conflict with national policy....and the submitted plan does not set out how flexibility can be applied*” (para 12.18). He thus recommended that draft policy AW15 be deleted, and the Plan was modified and adopted accordingly.
- 4.11 Section 2.8 of the Paper notes that ‘(draft) policies AW14 and AW15 have a significant relationship with one another’, and this serves to explain further commentary in the Paper that ‘*the designation of the (Craig yr Hesg extension) site does not afford the land, and specifically the entire boundary of the site guaranteed permission for extraction here. Indeed, further evidence would be required to show how extraction from this land will take place in accordance with current National Planning Guidance. Furthermore, further evidence will be required to show how much of the site could be developed, and how much mineral is available.....MTAN1 requires there to be ‘clear and justifiable reasons for reducing the distance’.*

- 4.12 This confirmation of there being no guarantee of permission being granted for development at a site allocated in an LDP is of course common to all allocations for all forms of development, and there is nothing unique about that statement in relation to the Craig yr Hesg Quarry SSA25 'preferred area'. Moreover, in this case, the commentary was in part based upon the intentions of draft policy AW15 which was subsequently deleted, and which does not form part of the adopted LDP.
- 4.13 At the LDP examination, RCT defended the proposed identification of the Craig yr Hesg 'preferred area' in the face of local opposition, and the Inspector concluded that *'the decision to identify an extension to the quarry in the LDP as a preferred area of known mineral resources is pragmatic and sensible. It also accords with national policy by maintaining a deliverable landbank facilitating the supply of an important resource.'* (ref LDP Inspector's Report para 12.4). The adopted LDP thus makes provision for a western extension to the quarry within a 'preferred area of area of known mineral resources' (ref Policy SSA 25).
- 4.14 The accompanying text of the LDP confirms that Craig yr Hesg is the only operating sandstone quarry in RCT, and that the existing quarry currently produces high specification polished stone value (PSV) or 'skid resistance' Pennant Sandstone. It notes that *"the resource is in high demand and is recognised as being an important high specification aggregate (HSA), i.e. a material suitable for the highly demanding use of road surfacing materials"* (ref para 6.184). The Plan also cross refers to the Regional Technical Statement (2008) which *"identifies the need to allocate additional rock reserves in Rhondda Cynon Taff, to ensure a supply of general hardstone resources over the period of the LDP..."* (ref para 6.185).
- 4.15 The identification of the 'preferred area' as an extension to Craig yr Hesg Quarry is the only provision of land for future aggregates production made in the LDP, which the LDP relies upon as part of RCT's contribution to regional supplies as required by MTAN1 and the RTS. In terms of PPW11, para 5.14.19 it represents the *'clear guide to where non-energy (aggregates) extraction is likely to be acceptable'* and where *'planning permission might reasonably be anticipated'*. Continuity of extraction at Craig yr Hesg Quarry thus represents the primary aggregates minerals strategy of RCT via the LDP. It follows that the release of the reserves at the Craig yr Hesg extension site is central to ensuring the required continuity of aggregate supply and the delivery of the LDP minerals strategy. This also applies in the short term to the importance of continuing extraction beyond December 2022 via the S73 time extension request.
- 4.16 In the context of the requirements of Section 38(6) of the Planning and Compulsory Purchase Act, the development is in accordance with the development plan, and there are no other material considerations which indicate otherwise. This is re-enforced by the 'implementation' section of the LDP (Chapter 7) which confirms that the Plan *"provides a framework for rational and consistent decision making"* and that *"it will be the key document in determining development and land use changes in the County Borough in the period up to 2021"* (ref para 7.1)
- 4.17 The decision of the RCT Planning & Development Committee to refuse both the western extension and S73 applications against the advice of the RCT Officers does not represent

*“rational and consistent decision making”* nor is it consistent with a commitment to the delivery of the land use developments promoted by the Plan.

- 4.18 Further, if the western extension scheme within the allocated SSA25 ‘preferred area’ is not acceptable, or if a revised scheme based upon a rigid 200m standoff to sensitive property is not acceptable to RCT (which would address the specific reason for refusing the western extension application, discussed below), then it is difficult to understand what form of mineral extraction development within the preferred area would be acceptable to RCT, and how the mineral planning strategy of the LDP will be delivered. The LDP was deemed to be ‘sound’ at the adoption stage based upon the deliverability of the mineral supply strategy via policy SSA25, and this deliverability should not be thwarted without good reason.
- 4.19 It is also the case that the identification of the policy SSA25 ‘preferred area’ implicitly assumes the acceptability of the continuation of operations at the existing quarry beyond 2022, otherwise policy SSA25 would not be deliverable. In policy terms, there is thus no logic in RCT now seeking to resist the S73 scheme on the basis of alleged conflict with development plan policy. It is to be noted that RCT correctly did not seek to rely upon any policy conflict in the stated reason for refusing either of the applications, and they have only belatedly sought to introduce a policy argument via the new case they now seek to present, as discussed further in Section 6.0 below.
- 4.20 Policy AW14: Safeguarding confirms that the *“Limestone and Sandstone quarries at Forest Wood, Hendy and Craig yr Hesg, will be further safeguarded from development that would adversely affect their operations by 200 metre buffer zones as shown on the proposals maps”*.
- 4.21 The Proposals Map illustrates a ‘buffer zone’ drawn 200m from the edge of the existing permitted area of Craig yr Hesg Quarry, and from the boundary of the ‘preferred area of known resources’ extension area also defined on the Map. In that context, given that the proposed quarrying area within the ‘preferred area’ is a substantially reduced area compared to the ‘preferred area’, there would be no mineral extraction or related mineral operations within the buffer zone as defined on the Proposals Map.
- 4.22 Core Strategy Policy CS10 has an overarching objective to ....*“contribute to the local, regional and national demand for a continuous supply of minerals, without compromising environmental and social issues.....”*
- 4.23 It seeks to meet this objective via six criteria, of which the following are of relevance to the appeals:
1. *Maintaining a minimum 10 year landbank of permitted rock aggregate reserves throughout the plan period (to 2021), together with an extended landbank in the form of a preferred Area of Known Mineral Resource; (i.e. the Craig yr Hesg western extension area)*
  4. *Ensuring that appropriate restoration and aftercare measures are incorporated;*

*6. Ensuring that impacts upon residential areas and sensitive land uses from mineral operations and the transportation of minerals are limited to an acceptable proven safe limit”*

- 4.24 In terms of the landbank and extended landbank, it is apparent from Section 3.0 of my evidence that this objective can only be realised if additional reserves are released within the western extension ‘preferred area’ at Craig yr Hesg.
- 4.25 My understanding is that there are no issues from RCT’s perspective regarding the appropriateness of the proposed restoration scheme.
- 4.26 In terms of impacts upon residential areas, it must be the case that in promoting an extension to Craig yr Hesg Quarry via identification of the LDP ‘preferred area’, RCT were satisfied that the impacts associated with operations within the existing quarry and processing plant site were, and are capable of, continuing to be limited to an ‘*acceptable proven safe limit*’. If this were not the case then an extension to the quarry within the ‘preferred area’ would not be a deliverable policy, whatever the lateral extent of the extension development. This is re-enforced by the subsequent determination of the Environment Act ROMP application (April 2013) which imposed a detailed schedule of planning conditions deemed adequate by RCT to limit the impact of the ongoing operation within the existing quarry to within an ‘*acceptable proven safe limit*.’
- 4.27 In a similar way, RCT must have been satisfied that continued operations within the existing quarry and proposed ‘preferred area’ would not, in principle, compromise environmental and social issues, since otherwise, as above, the ‘preferred area’ policy would be undeliverable.
- 4.28 In terms of both the western extension area and S73 appeal proposals, it is also noteworthy that, without exception, the technical consultees raised no objection to the developments in terms of objective criteria, and thus implicitly agree that the developments could take place within an ‘*acceptable proven safe limit*’. The general amenity concerns set out in the reason for refusing the two appeals are set at a lower threshold: they highlight amenity issues, but not of such significance as to constitute a conflict with the criterion set by policy CS10. They simply recognise that, as is the case with all quarry developments, there will be amenity effects, but in this case, not of sufficient magnitude so as to lie outside the parameters of being within an ‘*acceptable proven safe limit*’. I return to this issue in terms of the similar requirements set out in national planning policy, and the related requirements of LDP policies AW5 and AW10 which seek to avoid ‘significant’ impacts and adverse risk.
- 4.29 The accompanying text to Policy CS10 makes reference to buffer zones, and to the 200m distance between sandstone extraction and settlements indicated in national planning policy (ref MTAN1 discussed below). However, the LDP emphasises that there is ‘*some scope identified in national guidance where exceptional circumstances of a particular proposal may allow for the reduction in the above standard distances*’ (ref para 4.97). Given the reference to ‘national guidance’ the policy thus needs to be read in conjunction with the wider advice on buffer zones set out in PPW11 and MTAN1, though noting that neither document makes any reference to ‘*exceptional circumstances*’.

- 4.30 The accompanying text also notes that minerals impact upon all aspects of our lives, providing resources for construction, roads, energy and our household and commercial needs (ref para 4.90). It continues by recognising that *‘quarrying can have major impacts upon the environment and landscape and yet are crucial to the nation’s economy’* (para 4.91). It thus confirms that *‘the LDP minerals policies will balance the need for safeguarding of nationally, regionally and locally important mineral resources whilst considering their appropriate extraction against the potential impact of such development on residential and sensitive receptors, the landscape and on sites of nature conservation importance’* (ref para 4.92).
- 4.31 That balancing exercise resulted in the identification of the ‘preferred area’ as an extension to Craig yr Hesg Quarry as an area for ‘appropriate extraction’, and at the application stage for the two applications, the absence of objection from technical consultees weighed heavily in the determination balance, and the decision of RCT not to allege any conflict with policy CS10 in the stated reasons for refusing the two applications.
- 4.32 A similar theme is included in Policy AW10, which confirms that development proposals will not be permitted where they would cause or result in a risk of unacceptable harm to health and / or local amenity because of, inter alia, air and noise pollution, *“unless it can be demonstrated that measures can be taken to overcome any significant adverse risk to public health, the environment and / or impact upon local amenity”*. Again, whilst RCT have expressed some generalised amenity concerns via the reasons for refusal, such concerns were not sufficient to represent *‘significant adverse risk’* and thus a conflict with Policy AW10. In practice, the identified issues have been fully considered as part of the EIAs and ESs (and are dealt with in the evidence of other witnesses) sufficient for me to confirm my view, based upon that evidence, that measures are available which can be imposed as planning conditions (or are regulated by other regimes) to ensure that the extension development and ongoing development within the existing quarry will not give rise to *“significant adverse risk’*.
- 4.33 This position is re-enforced by the fact that no health objection has been submitted by any health stakeholder in respect of either of the two applications and is the reason why the Planning Officer advised the July 2020 Committee with respect to the western extension application that *“it is not considered that a reason for refusal on the grounds of impact on health and air quality can be justified”*.
- 4.34 Policy AW5 includes a similar requirement that development proposals will be supported where there would be no *‘significant impact’* on the amenities of neighbouring occupiers. As with Policy AW10, the test is whether the impact would be *‘significant’*.
- 4.35 Policy AW8 confirms the need for new development proposals not to cause harm to features of a Site of Importance for Nature Conservation (SINC) or other locally designated sites, unless, inter alia, the proposal will not unacceptably impact on the features of the site for which it has been designated.
- 4.36 There is a designated Local Nature Reserve (LNR) within the woodland to the south of the existing quarry (partly within land where the rights to quarry were relinquished as part of

the 1993 Craig yr Hesg Quarry extension permission), but there would be no direct or indirect effect on this Nature Reserve. In addition, plan ref CYH/E6 accompanying the western extension application illustrates land in Hanson's ownership to the north west of the LNR which could be made available as a gift to RCT for a possible extension to the LNR. However, RCT has declined this offer.

- 4.37 The western extension appeal site includes a small area of the Craig yr Hesg / Lan Wood SINC which comprises an extensive area to the south west of the western extension site. The small area of the SINC within the western extension appeal site lies outside the proposed mineral extraction area and would not be affected by the quarry extension.
- 4.38 Finally, Policy SSA23 identifies 'Special Landscape Areas' (SLA) which cover large parts of the rural area of RCT, and where development will be expected to conform to the highest standards of design appropriate to the character of the area. The SLA boundary in the vicinity of Craig yr Hesg Quarry has been drawn such that it excludes both the quarry and the 'preferred area' and there would thus be no mineral development within the defined SLA area.
- 4.39 For completeness, it should be noted that in September 2020 RCT commenced work on the preparation of a revised LDP 2020 – 2030 following approval of a 'Delivery Agreement' by Welsh Government on 14<sup>th</sup> September 2020. As a result of delays in progressing a revised LDP it is understood that RCT intend to stop work on that plan and to progress with a new Revised LDP with a 15 year timescale from 2022 – 2037. However, as at the date of drafting this Proof of Evidence, a Delivery Agreement has not been finalised and the timetable for the preparation and adoption of the Revised LDP is uncertain.
- 4.40 In the meantime, pending replacement by a new Revised LDP, the currently adopted RCT LDP remains in force as the development plan for RCT.

### Planning Policy Wales Edition 11 (PPW11)

- 4.41 Another witness (Owen Jones) deals with the general planning principles set out in PPW11 and the relationship to the well-being goals set out in the Well Being of Future Generations Act 2015 (WBFGA). My evidence thus focuses on the specific minerals planning policy content of PPW11 set out in Section 5.14 of PPW11.
- 4.42 PPW11 confirms that:
- “Society needs, and will continue to need for the foreseeable future, a wide range of minerals. Minerals are the principal constituents of most construction products, many pharmaceutical, chemical, agricultural, automotive, metallurgical, electronics, aerospace, plastics ceramic and paper products. Construction related minerals and mineral products are particularly important in Wales and are essential for housing and infrastructure, such as schools, roads, railways, airports and flood defences and a steady and adequate supply of materials is necessary”* (para 5.14.1)
- 4.43 It further emphasises that:

*The role of the planning authority in relation to mineral extraction is to balance the fundamental requirement to ensure the adequate supply of minerals with the protection of amenity and the environment. The key principles are to:*

- *provide positively for the safeguarding and working of mineral resources to meet society's needs now and in the future, encouraging the efficient and appropriate use of high quality materials;*
- *protect environmental and cultural characteristic of places, including those highly cherished for their intrinsic qualities, such as wildlife, landscapes, ancient woodlands and historic features, and to protect human health and safety and general well-being;*
- *reduce the impact of mineral extraction and related operations during the period of working by ensuring that impacts on relevant environmental qualities caused by mineral extraction and transportation, for example air quality and soundscape, are within acceptable limits; and*
- *achieving, without compromise, a high standard of restoration and aftercare so as to avoid dereliction and to bring discernible benefits to communities, heritage and/or wildlife, including beneficial after uses or opportunities for enhancement of biodiversity and the historic environment (para 5.14.2).*

4.44 These guiding principles are returned to in the planning policy conclusions section below and in my response to the reasons for refusing the two applications, notably in relation to the need for the Planning Authority to '*provide positively for the working of minerals*', the need to reduce the impact of mineral extraction and related operations to '*within acceptable limits*', and the ability to deliver a '*high standard of restoration*', and to '*bring discernible benefits*' associated with the restoration scheme.

4.45 As further context, PPW11 notes that:

*Mineral working is different from other forms of development in that:*

- *extraction can only take place where the mineral is found to occur*
- *it is transitional and cannot be regarded as a permanent land use even though operations may occur over a long period of time; and*
- *when operations cease land needs to be reclaimed to a high standard and to a beneficial and sustainable after-use so as to avoid dereliction and to bring discernible benefits to communities and/or wildlife (para 5.14.4).*

4.46 Additional context is provided by paragraph 5.14.42, namely:

*"Mineral workings should not cause unacceptable adverse environmental or amenity impact. Where this is not possible working needs to be carefully controlled and monitored so that any adverse effects on local communities and the environment are mitigated to acceptable limits. Any effects on local communities and the environment must be minimised to an acceptable standard" (re para 5.14.42).*



4.47 It is my evidence, supported by responses to both applications from the technical consultees at the application stages that:

- both the western extension scheme and the continuation of operations at the existing quarry via the S73 time extension request are capable of being '*carefully controlled*'
- effects on the local community and the environment can be '*carefully monitored*' via requirements of planning conditions, the Environmental Permit, and via ongoing PM10 monitoring (for which a contribution towards the cost of such monitoring is catered for in the Section 106 Agreements accompanying both schemes), and
- effects can be mitigated to '*acceptable limits*' and can be minimised to an '*acceptable standard*'.

In this respect, it is important to note that the national planning policy requirement is not to eliminate effects, but to ensure that they are mitigated and minimised to acceptable limits and standards. I consider that this requirement can be discharged in respect of both schemes.

4.48 Of key relevance to the reason for refusing the western extension application is the advice on buffer zones set out in paragraphs 5.14.44 – 5.14.46 inclusive. In summary, this encourages the identification in development plans of buffer zones around existing and proposed minerals sites where there should be no new mineral extraction, and no new development which would be sensitive to adverse impact from mineral extraction.

4.49 The advice further notes that whilst the primary purpose of buffer zones is to limit the impact of mineral working, their wider beneficial role as part of green infrastructure provision and protecting and enhancing biodiversity should be explored.

4.50 In this case, a 'buffer zone' has been defined on the Proposals Map accompanying the RCT LDP. This has been drawn at a distance of 200m from the outer edge of the existing quarry, and 200m from the defined western extension 'preferred area'. No mineral extraction is proposed within the buffer zone as defined on the Proposals Map either within the western extension 'preferred area' or within the existing quarry. It is also the case that the proposed screening landform associated with the western extension development which would be constructed within the buffer zone would have a beneficial 'green infrastructure', landscape and biodiversity benefit by virtue of the substantial tree planting proposed.

4.51 Paragraph 5.14.46 of PPW11 cross refers to the more detailed advice on buffer zones contained in paragraphs 70 and 71 of MTAN1. For ease of reference, this is set out below:

#### **Buffer Zones**

*70. MPPW (paragraph 40) established the principle of Buffer Zones around permitted and allocated mineral extraction sites. Development plans are required to indicate the boundary of the buffer zone. Within the buffer zone, no new sensitive development or mineral extraction should be approved. Sensitive development is any building occupied by*

*people on a regular basis and includes housing areas, hostels, meeting places, schools and hospitals where an acceptable standard of amenity should be expected. Sensitive development could also include specialised high technology industrial development where operational needs require high standards of amenity.*

*71. The objective of the buffer zone is to protect land uses that are most sensitive to the impact of mineral operations by establishing a separation distance between potentially conflicting land uses. Research has indicated that people living close to mineral workings consider dust to be the main impact of mineral extraction and any processing operations, followed by traffic, and noise and vibration from blasting. After careful consideration, including consultation with a number of interested and informed parties, the Welsh Assembly Government takes the view that the following minimum distances should be adopted unless there are clear and justifiable reasons for reducing the distance. An example may be that, because of other means of control, there is very limited impact from the mineral extraction site.*

<b>Mineral Extraction Type</b>	<b>Minimum Distance</b>
<b>Sand and gravel (and others where no blasting is permitted)</b>	<b>100 metres</b>
<b>Hard rock quarries</b>	<b>200 metres</b>

*The buffer zone should be defined from the outer edge of the area where extraction and processing operations will take place, including site haul roads, rather than the site boundary, as there may be land within site boundaries where mineral activities are limited or no operations are proposed so that the impact of the proximity of such land is negligible. Where mobile plant is likely to be used it will usually be necessary to control by planning conditions the location of the operational area where plant may operate in order to maintain the buffer zone and thus protect amenity.*

- 4.52 Consistent with this advice, the RCT LDP Proposals Map identifies a 200m buffer zone around the existing permitted area of Craig yr Hesg Quarry and from the boundary of the Preferred Area of Known Mineral Resources defined on the Map (policy reference SSA25). However, based upon the advice in MTAN1, the LDP confirms that there is *‘some scope identified within national guidance where exceptional circumstances of a particular proposal may allow for the reduction in the above (200m) standard distances’* (ref LDP para 4.97), albeit national guidance does not refer to *‘exceptional circumstances’*.
- 4.53 There would be no mineral extraction or related operations undertaken in the buffer zone around the boundaries of the existing quarry, and the proposed limits of extraction within the western extension area does not extend to the full boundary of the *‘preferred area’* as defined, and thus does not extend into the buffer zone around the *‘preferred area’*.
- 4.54 It is also apparent from the content of MTAN1 (and the LDP) that there is no embargo against reducing the 200m buffer zone distance. The appropriate distance may be judged on a case-by-case basis where the requirement is that there should be *‘clear and justifiable reasons*

for reducing the distance' The example cited is that, because of other means of control, there is very limited impact from the mineral extraction site.

- 4.55 These issues are considered further in Section 5.0 in the response to the reason for refusing the western extension application, which is confined to issues associated with the buffer zone.

### Minerals Technical Advice Note 1: Aggregates (MTAN1)

- 4.56 MTAN1 provides further advice on the means by which the five key sustainable principles for minerals planning originally set out in Minerals Planning Policy Wales 2000 are to be delivered.

- 4.57 The first of the key principles (A) is to provide aggregate resources in a sustainable way to meet society's needs for construction materials in line with a series of objectives, including:

- *Ensuring planning permissions for future primary extraction are essential and properly planned for in accord with the Regional Technical Statement..... (ref MTAN1 paragraph 8).*

- 4.58 MTAN 1 sets out detailed advice on the mechanisms for delivering the 'key principle' of reducing the impact of mineral extraction and related operations during the period of mineral working (key principle C). This includes advice on dust, noting that experience has shown that dust emissions can result from:

*"Haulage, particularly on internal and surfaces routes, or nearby roads which are not adequately wetted, and if vehicles are un-sheeted; crushing and grading operations... surface stripping, including soils and overburden storage, restoration operations" (reference paragraph 72).*

- 4.59 MTAN1 notes that planning conditions can control certain activities to protect against dust emissions, although many of these are now controlled under the Environmental Protection Act 1990 (now Pollution Prevention and Control Act 1999), as is the case with the processing plant and asphalt plant at the Quarry. However, it highlights a number of issues which might be controlled by planning conditions including the imposition of speed restrictions within the quarry, sheeting of vehicles, the design of working programmes to locate dust emission sources away from sensitive developments, and the timing of soil handling and overburden stripping to suit weather conditions (paragraph 77). As discussed by another witness (Katrina Hawkins) these issues are readily capable of being controlled by way of conditions as a continuation of controls which are in place at the existing Quarry, noting also the separate Dust Monitoring and Management Plans which have been proposed for both the western extension development and S73 time extension development.

- 4.60 MTAN1 also provides advice in relation to noise, with confirmation that the effects of noise should be fully considered in formulating future proposals for aggregates extraction, and noise impact must be minimised to "*acceptable levels*" (reference paragraph 85). Again,

these issues are discussed by another witness (Rachel Canham) who concludes that noise can be controlled to within the 'acceptable levels' recommended in MTAN1.

- 4.61 MTAN1 further emphasises that the visual impact of developments should be assessed carefully, and that attention is to be afforded to determine the potential impact on the character of the landscape. It notes that an assessment should facilitate a comprehensive understanding of the visual impact of a development from various locations which will assist in devising an appropriate layout and phasing, and the most appropriate restoration strategy (reference paragraph 90). Again, a careful assessment of the landscape and visual effects of the proposed development has been undertaken as part of the EIA process and no objections have been raised by RCT in respect of visual and landscape issues.
- 4.62 Finally, MTAN1 provides advice on restoration and aftercare as part of the objective to achieve high standards of restoration and aftercare and provide for a beneficial after use (reference 'key principle D'). It proposes that for longer term workings it is appropriate to agree at the outset the outline requirements, with planning conditions requiring the submission of a detailed scheme for restoration and aftercare by a specific stage towards the end of the life of the permission (reference paragraph 120)
- 4.63 This is the approach taken with the proposed restoration strategy for both the existing quarry and proposed extension and consolidation scheme, albeit noting that in the event that both appeals are dismissed, then the currently approved restoration scheme for the existing quarry would not be capable of being implemented since the quarry would not have been fully worked to allow the approved restoration scheme to be delivered.
- 4.64 MTAN1 provides more detailed advice on the content of restoration and aftercare schemes, including the benefits of restoration to amenity and nature conservation (paragraph 134), including natural regeneration over parts of the site to allow a mosaic of habitats to establish naturally. These principles have been embraced in the design of the restoration strategies.

## Planning Policy Conclusions

- 4.65 PPW11 recognises that mineral extraction can only take place where the mineral is found to occur; it is transitional even though operations may occur over a long period of time; and any adverse effects on local amenity and the environment need to be mitigated to 'acceptable levels' and 'acceptable standards' (paras 15.14.42 and 15.14.42). A similar test is set out in the development plan with the requirement to mitigate effects to within an 'acceptable proven safe limit' (ref policy CS10) and to avoid 'significant' impact (policy AW5) and 'significant' adverse risk (policy AW10).
- 4.66 The language of the development plan and PPW11 recognise that it is unlikely that the environmental effects of mineral extraction can be fully eliminated, and the requirement is thus to mitigate the environmental impacts of mineral extraction and to 'carefully control and monitor' effects (PPW11 para 5.14.42).
- 4.67 In this context, it is noteworthy that neither of the reasons for refusal allege any conflict with policy in the development plan (reasons for refusal set out in paragraphs 5.6 and 6.2 below).

The reason for refusing the western extension application (paragraph 5.6 below) is confined to an issue of encroachment within 200m of sensitive development (ref MTAN1 paras 70 and 71), and the contention by RCT that the applicant has failed to provide sufficient evidence of clear and justifiable reasons for reducing the minimum distance in this case.

- 4.68 In terms of the separation distances between the limits of extraction within the extension area and the closest residential properties in Glyncoch, the advice in MTAN1 is that a minimum separation distance of 200m should be adopted *'unless there are clear and justifiable reasons for reducing the distance'* (para 71). Similar advice is provided in the RCT LDP which highlights the scope to allow for a reduction in the standard distance based upon the exceptional circumstances of a particular proposal (LDP para 4.97), noting also the comments made by the Inspector in his report following the LDP examination which expressly rejected the notion of rigid buffer zone distances.
- 4.69 In this case I consider that there are *'clear and justifiable reasons'* for reducing the buffer zone distance for mineral operations in the extension area from the recommended 200m to 175m in that *'because of other means of control, there is very limited impact from the mineral extraction site'* (ref MTAN 1 para 71), as follows:
- (i) the noise and blast vibration limits which have been recommended in the EIA (based on the guidance in MTAN1), can be met notwithstanding the reduced distance
  - (ii) the effects on amenity in terms of noise and dust would be minimised by the screening landform with additional dust control measures to be implemented via the Dust Management and Monitoring Plan; and
  - (iii) the operations within 175m would be short term (on the upper benches), intermittent and a comparatively small proportion of the extraction area, where the majority of works, both laterally and at depth within the quarry would be at a distance of in excess of 200m. (See also paragraph 5.21 below).
- 4.70 The reason for refusing the S73 time extension application (ref para 6.2 below) is based upon general amenity concerns associated with a continuation of existing operations within 200m of sensitive development, but where such concerns do not represent the 'significant' effects referred to in policy in the development plan, nor is there any issue with an inability to mitigate effects to within 'acceptable levels and standards' as referred to in national planning policy. Reference is also made in the reason for refusal to Glyncoch being a deprived community and that such communities are acknowledged as being disproportionately affected by health problems (though no evidence for this is provided in support of this contention). This issue is addressed in the evidence of Andrew Buroni who refutes the suggestion that this is a material issue.
- 4.71 In terms of the S73 time extension, there would be no changes to operations within the extraction area, noting that the remaining operations would be increasingly undertaken at depth and at greater distances from sensitive development. There would be no changes to the existing processing and mineral treatment arrangements within the plant site, where such operations are already adequately regulated by existing planning conditions and

controls imposed by the Environmental Permit. Other than a number of beneficial changes discussed in Section 7.0 below, there would be no alterations to the circumstances which applied at the time of the determination of the ROMP Review application in 2013 when RCT concluded that via the updated planning conditions imposed as part of that Review the development could continue in a way which avoided '*significant*' effects and where the effects could be mitigated to within '*acceptable limits and standards*'. The S73 time extension would not change this established position.

- 4.72 Notwithstanding my conclusion as to the way in which environmental effects can be "carefully controlled", planning policy requires that the determination of a planning application needs to consider wider issues as part of an overall planning balance. Uppermost in this is the acknowledged need set out in PPW11 to provide mineral resources to meet society's needs and '*to maintain a steady and adequate supply of minerals*' (PPW11 para 5.14.1). Moreover, and of significance to the HSA available at Craig yr Hesg Quarry, is the requirement that the UK and regional need for such minerals should be accorded "*significant weight provided environmental impacts can be limited to acceptable levels*" (ref PPW11 para 5.14.23). Based upon the conclusions of the respective ESs, the responses of technical consultees to the two applications, and the evidence of other technical witnesses on behalf of the Appellants, I consider that environmental effects would not be '*significant*', they could be limited to "*acceptable levels*" and to within '*acceptable standards*', and the project is thus entitled to be afforded the '*significant weight*' referred to.
- 4.73 PPW11 also requires Planning Authorities to '*provide positively for the working of mineral resources*' (para 15.14.2). The refusal of both applications is not the '*positive*' response required by national policy.
- 4.74 Further, PPW11 requires each mineral planning authority to make an appropriate contribution to meeting local, regional and UK needs for primary minerals which reflects the nature and extent of resources in the area (ref para 15.14.10).
- 4.75 The western extension development would make a substantial contribution towards meeting the identified need, and in terms of the identification of the LDP '*preferred area*', it represents the only development plan means by which that need could be met. The S73 time extension request submitted in response to the refusal of the western extension development would avoid a further supply deficiency by at least making provision for existing permitted reserves to be worked.
- 4.76 The underlying requirement of the development plan and PPW11 is to ensure that a proper balance is struck between the need for minerals and the protection of existing amenity and the environment. In this case, the need for the mineral is recognised and acknowledged at both a national and local level and is expressly planned for via the LDP preferred area.
- 4.77 The other element of the balance - protection of amenity and the environment, has been at the forefront of the project design and EIA mitigation measures for both schemes. The conclusion I reach and which the technical consultees and RCTs Public Protection Section endorse, is that the environmental effects are not '*significant*' and can be successfully

minimised to within “*acceptable limits*”. This conclusion is reflected in the two reasons for refusal which do not allege any conflict with the development plan.

- 4.78 My overall planning policy conclusion is that the two developments would be in accordance with the development plan both in term of the identified preferred area and fulfilment of a strategic mineral supply strategy of the Plan, but also in terms of the individual environmental protection policies which have been assessed. The developments are thus entitled to a presumption in favour of planning permission being granted (ref Section 38(6) of the Planning and Compulsory Purchase Act 2004).
- 4.79 In addition, in terms of a wider planning balance, consideration needs to be given to the weight to be afforded to the need for the development; the importance of continuity of supply; the special quality of the high specification aggregate (HSA); the economic importance of the development in terms of supply of the HSA; the need to afford ‘significant weight’ to the supply of HSA which is to be treated as a ‘special case’; the absence of any material public health impact, and the socio economic benefits (as discussed by another witness). Based upon these additional factors, I consider that the balance should fall heavily in favour of the schemes.
- 4.80 Finally, another witness (Owen Jones) considers the analogous and parallel planning balance in terms of the goals of the WBFGA and the relationship between the WBFGA and the Planning Act 1990 (and indirectly the Planning and Compulsory Purchase Act 1994) as they relate to the determination of planning applications. He correctly notes that the provisions of the development plan, so far as material to the application, and any other relevant other material considerations remain the primary considerations when determining planning applications.
- 4.81 He concludes, based upon the analysis which he undertakes, that the appeal schemes contribute positively to each of the WBFGA well-being goals (albeit to different extents) and that this is a material consideration which weighs in favour of planning permission being granted.
- 4.82 In contrast he notes that there is no obvious analysis by RCT of how the proposed developments have been judged against the WBFGA goals or against RCT’s well-being objectives. In particular, I agree with his conclusion that that the RCT allegation that the proposed S73 development conflicts with one Goal, without a balanced consideration of its contribution in respect of the other Goals is not the correct application of the framework provided by the WBFGA. I return to this issue in paragraph 6.25 below.





## 5.0 THE WESTERN EXTENSION APPEAL

### Response to the reason for Refusal

- 5.1 The issues which were considered in the determination of the application are referred to in Section 6.0 of the Appellants' Statement of Case and these matters are thus not fully repeated in my evidence. However, it is instructive to highlight a number of key passages from the February and July Reports to the Planning & Development Committee (hereafter referred to as the Committee) (CD4.1 and 4.2) which relate to the ultimate buffer zone reason for refusing the application.
- 5.2 In relation to the key topics, the 6<sup>th</sup> February 2020 Committee Report noted the following:

#### Need

*The site is within an area identified as a "Preferred Area of Known Mineral Resource" in the adopted Local Development Plan. There is an expectation under the terms of the Regional Technical Statement for Aggregates for the South Wales Area (1st Review) that Rhondda Cynon Taf will secure additional reserves for aggregate production in order to meet the requirement to have a minimum of 10 years supply throughout the LDP period.*

*It is considered that the Area of Preferred Known Mineral Resource this application sits within is the only realistic prospect of providing these reserves and therefore extending the quarry is considered acceptable in principle. It is also noted that stone extracted from Craig yr Hesg has a very high skid resistance of UK importance and is used in specialist road surfaces projects due to this.*

*There is a clear need for additional reserves of crushed rock to be released in RCT to meet the RTS requirements and comply with policy CS10(1) of the LDP. The site is allocated as a Preferred Area of Known Mineral Resource in Policy SSA25 and the amount of reserves released by the proposal is not considered to be excessive.*

#### Dust

*In terms of nuisance dust there are no sensitive developments within 100m of the extension area and therefore adverse impacts from nuisance dust are not anticipated provided standard dust management controls continue to be applied as per existing planning conditions. It should be noted that there are seventeen residential properties within 100m of the quarry plant. However, the impact on these properties was considered as part of the ROMP permission and controls were put in place which can be replicated in any new planning permission granted. The mineral crushing and screening plant and directly associated equipment also operates under the terms of an Environmental Permit issued by the Council. The terms of the Permit seek to ensure that all appropriate preventative measures are taken to avoid pollution of the air.*

### Air Quality

*Following consultation and liaison with the Council's Public Health, Protection & Community Services and Public Health Wales it is now considered that sufficient information has been submitted to provide evidence that processes can be managed to ensure a limited impact upon the level of air quality and neighbour amenity in respect of particulate matter and therefore the application is considered to be acceptable in this respect. In particular Public Health Wales and Cwm Taf University Health Board have indicated that based on current levels of activity adverse air quality impacts and consequently human health impacts are unlikely.*

### Blast Vibration

*In respect of the impact of blast vibrations on residential properties, the proposed ground vibration blasting levels are considered acceptable.*

### Buffer Zone

*It is considered that the effects of the proposal can be mitigated and managed to a level where they have a minimal impact on sensitive developments surrounding the site. Therefore, it is considered that there are clear and justifiable reasons for not applying the 200m buffer zone rigidly and the application is acceptable, subject to the conditions set out below to ensure this takes place.*

5.3 Notwithstanding this advice, the members of the Committee resolved that they were minded to refuse the application, with a formal decision to be deferred to allow a further report to be presented to Committee on the strengths and weaknesses of making a decision contrary to the officer recommendation.

5.4 The requested Report was presented to the 9<sup>th</sup> July 2020 Committee where the Report rehearsed the issues associated with the distances from sensitive developments and the acceptability of impacts, as set out in the February Report, and reached the same conclusion that:

*"In the opinion of your officers the impact of a reduction in the buffer zone below 200m does not result in any identifiable significant adverse impacts as a result of dust, air quality and noise".*

5.5 The July Report also reminded members that:

*".....the original report set out in detail the need for additional crushed rock reserves within the County to comply with Policy CS10(1) of the Local Development Plan and the requirements of the Regional Technical Statement for Aggregates. A need existed at the time the Local Development Plan was adopted and the extension of Craig-yr-hesg Quarry was the preferred option to meet that need, hence its identification as a Preferred Area of Known Mineral Resource within Policy SSA25. No other alternative options were identified at that time. If this application is refused it should be noted that this need remains (and is likely to be greater when the Regional Technical Statement – 2nd Review*

*is published later this year) and alternative arrangements to meet that need will have to be made in order to comply with Policy CS10(1) and Welsh Government Policy”.*

5.6 Nevertheless, the application was refused for the following reason:

***‘Minerals Technical Advice Note (MTAN) 1: Aggregates (Paragraphs 70 and 71) identifies a suitable minimum distance between hard rock quarries and sensitive development is 200 metres, and states that any reduction from this distance should be evidenced by clear and justifiable reasons. The proposed quarry extension encroaches within 200m of sensitive development and the Council does not consider that the applicant has provided sufficient evidence of clear and justifiable reasons for reducing that minimum distance in this case’.***

5.7 Article 24 to the Development Management Procedure (Wales) Order 2012 (as amended) confirms that a refusal decision notice must state clearly and precisely the full reasons for refusal, specifying all policies and proposals in the development plan which are relevant to the decision. A similar requirement is set out in paragraph 1.20 of PPW11.

5.8 Two points arise from this requirement, namely:

(i) Via the stated reason for refusal, RCT are not relying upon any alleged conflict with the development plan either in terms of the key LDP policy SSA25 and identification of the western extension ‘preferred area’, or with individual environmental and amenity protection policies, notably the requirement to mitigate effects to within an ‘acceptable proven safe limit’ (ref policy CS10) and to avoid ‘significant’ impact (policy AW5) and ‘significant’ adverse risk’ (policy AW10).

(ii) There is no clarity or precision as to the reasons why RCT consider that the Applicant has failed to provide sufficient evidence of clear and justifiable reasons for reducing (the) minimum (200m) distance in this case. On the contrary, the Planning Officer in the February 2020 Committee Report noted that:

*sufficient information has been submitted to provide evidence that processes can be managed to ensure a limited impact upon the level of air quality....(emphasis added),*  
and

*It is considered that the effects of the proposal can be mitigated and managed to a level where they have a minimal impact on sensitive developments surrounding the site. Therefore, it is considered that there are clear and justifiable reasons for not applying the 200m buffer zone rigidly and the application is acceptable, subject to the conditions set out below to ensure this takes place.*

5.9 Planning is founded upon a ‘plan lead’ system which is intended to provide a sustainable context for the determination of planning applications, and certainty for developers and the public about the type of development that will be permitted at a particular location (ref PPW11 paragraphs 1.22 and 5.14.19).

5.10 PPW11 further notes that a development plan sets the context for ‘rational and consistent decision making’ (para 1.22).

- 5.11 The importance of the plan lead system is reflected in the long-standing requirement originally set out in the Planning and Compulsory Purchase Act 2004 (Section 38 [6]), and enshrined in PPW11, that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise (PPW11 para 1.22).
- 5.12 In this context, the starting point for the determination of the western extension appeal is the RCT LDP, and, in particular, the identification of the appeal site for future quarrying as a 'preferred area of known mineral resources'. The proposed development is, in terms of the principle of the development, fully in accordance with the development plan in terms of the Policy SSA25 preferred area and adheres to the area identified on the LDP Proposals Map (where actually a smaller area is proposed for extraction than that shown on the Proposals Map). In terms of PPW11, this is the identified area for future extraction which provides a clear guide to where extraction is likely to be acceptable and where planning permission might reasonably be anticipated (PPW11 para 5.14.19).
- 5.13 It is also relevant to note that this is a development effectively encouraged by RCT as part of their LDP, where the development represents the sole identified mineral area for future extraction, and the key component of the RCT mineral planning strategy for aggregates. Their own strategy, which forms an integral part of the delivery of the plan and the '*rational and consistent decision making*' emphasised by the Plan (para 7.1) should thus not be disregarded without sound reasoning.
- 5.14 This is re-enforced by the commitment in LDP Policy CS10 to contribute to the local regional and national demand for a continuous supply of minerals. Self-evidently, if the western extension appeal is dismissed (or the Section 73 time extension appeal) then this will seriously prejudice the stated commitment to provide for a continuous supply of minerals.
- 5.15 It is recognised that Policy CS10 is caveated by seeking to maintain supply '*without compromising environmental and social issues and ensuring that impacts upon residential areas are limited to an 'acceptable proven safe limit'*'. However, for reasons I have highlighted in Section 4.0 above, I consider that these environmental and amenity protection requirements have been met, and again, it is noteworthy that the reason for refusal does not allege any conflict with the amenity protection requirements set out in policy CS10.
- 5.16 In that regard, the consistent theme of both policy in the development plan and national planning policy is not a requirement to eliminate amenity impacts but to ensure that there are no '*significant*' impacts (LDP Policy AW5), and that where unavoidable impacts occur they are limited to within an '*acceptable proven limit*' (LDP Policy CS10), to within '*acceptable limits*' (PPW11 para 5.14.2), and to within an '*acceptable standard*' (PPW11 para 5.14.42).
- 5.17 These are the tests to be applied in assessing the significance of the amenity impacts arising from the encroachment of the development to within 200m of sensitive development (as defined), and where the tests need to be applied in the context of the 'limits' and standards' set out in the development plan and Welsh Government policy and technical guidance.
- 5.18 I conclude that with 'limits and standards' applied by planning condition (as is the case at the existing Quarry), there would be no '*significant*' impacts, and that the '*limits*' and '*standards*' with respect to noise, blast vibration, dust and air quality can be applied and adhered to in all

cases. There is no technical evidence to refute this from either RCT or any of the technical consultees, and, again, it is noteworthy that the reason for refusal does not allege conflict with any of the policies in the LDP which relate to these limits and standards.

5.19 In this respect, not only is there is no technical basis for the concern expressed in the reason for refusal regarding working within 200m of sensitive development, but there is similarly no policy basis for such a concern in terms of the tests to be applied.

5.20 In response to the specific concern raised in the reason for refusal regarding a reduction in the standard 200m separation distance / buffer zone, I agree with the Planning Officer's assessment that *'the effects of the proposal can be mitigated and managed to a level where they have a minimal impact on sensitive developments surrounding the site,(and) therefore, it is considered that there are clear and justifiable reasons for not applying the 200m buffer zone rigidly.*

5.21 Those 'clear and justifiable reasons' comprise:

- The acknowledged ability to comply with standards and limits whilst working at a reduced buffer zone distance, in a way which would minimise amenity impacts for the short timescale and intermittent duration of the extractive operations taking place within 200m of sensitive development.
- The additional mitigation which would be provided in the form of a screening landform between the development area and sensitive properties, which would not only be a substantial physical barrier, but which itself would be a landscape and wildlife enhancement via the substantial tree planting proposed, linking to adjoining woodland features.
- The combination of the above which would be consistent with the example cited in MTAN1 for reducing the minimum distance that *"because of other means of control, there is very limited impact from the mineral extraction site"* (ref MTAN1 para 71).
- The absence of any specific policy objections.
- The absence of any wider issues raised by RCT associated with working to the reduced buffer zone distance in terms of landscape, ecology, hydrology / hydrogeology or cultural heritage.
- The absence of any material difference in amenity terms of short term working at a distance of 175m behind a substantial screening landform compared to a distance of 200m: there would be no lesser ability to meet the noise and blast vibration limits which have been defined, and no change to the conclusions regarding limited dust and air quality impacts (noting that these conclusions are also valid for the existing quarry, and acknowledged as such via the ROMP review, which is considerably closer to larger numbers of residential properties than the extension area).

- The desirability of defining an extraction area which strikes a balance between maximising the yield of HSA and the mitigation of impacts on local amenity, rather than it being dictated by an arbitrary distance to sensitive property; and
- In the context of the above, the need to avoid what would be an unnecessary sterilisation of resources resulting from an increased separation distance between quarrying operations and residential properties, which at 200m from properties at Conway Close would amount to a sterilisation of some 1.5 million tonnes of HSA, which would not be a sustainable approach to the quarry development or aggregates supply within the region, particularly noting the ‘significant weight’ which is to be afforded to the supply of HSA.

- 5.22 Notwithstanding the above ‘clear and justifiable reasons’, if the Inspector concludes that a 200m separation distance should be rigidly applied in this case, then the opportunity is available to impose a condition requiring that no extraction or processing operations or haul roads will be permitted within 200m of sensitive properties, with the distances to be measured to the façade of the nearest buildings (noting the significance of measurement to ‘buildings’ set out in paragraphs 6.5 – 6.7 of the Appellant’s Statement of Case). As noted above, the effect of applying this distance would be the sterilisation of some 1.5m tonnes of HSA.
- 5.23 This option was drawn to the attention of RCT prior to the July 2020 Committee when the application was formally determined, via a letter to RCT dated 7<sup>th</sup> July 2020. In highlighting this option, the letter drew attention to the advice in the Development Management Manual that *“conditions and planning obligations can enable development proposals to proceed where it would otherwise be necessary to refuse permission”* (ref para 10.1.1).
- 5.24 It also noted the same general advice set out in MPG2 that *“the imposition of conditions on a planning permission can enable many development proposals to proceed where it would otherwise be necessary to refuse permission”* (ref para 43). Related advice is set out in Annex 12 to the Development Management Manual: Award of Costs, which includes examples of unreasonable behaviour on the part of a Planning Authority, including *“refusing permission on a ground clearly capable of being dealt with by way of a condition.....”* (ref para 3.11).
- 5.25 The letter thus emphasised that the application should not be refused when the opportunity is available to address the identified concern by imposing a planning condition which would prevent any quarrying operations within the proposed extension area taking place within 200m of existing sensitive development, as defined in paragraphs 70 and 71 of MTAN1.
- 5.26 In the July Committee meeting, the Planning Officer drew attention to the above letter but advised that this was not a suitable way forward given that all the plans and documents submitted with the application make it clear that the proposal is based on what the applicant considers to be the logical position of the extent of the quarry. The Planning Officer thus concluded that were a condition to be imposed reducing that logical extent, that may be seen in itself to be unreasonable because it does not accord with the submitted plans and

documents. He thus concluded that whilst such a condition would address the reason for refusal, the officers' position is that it is not appropriate in this case.

- 5.27 With respect to the Planning Officer, this was not correct advice. The offer of such a condition had been put forward by the Applicants, and thus the imposition of such a condition would not have been deemed unreasonable in those terms. This matter could have been dealt with in a number of straightforward ways, either by a condition, supported by a plan illustrating the area where no extraction or related operations could take place, or via a condition which required the submission of updated phasing plans with a revised limit of extraction, or, in addition, if necessary, via an additional obligation in a Section 106 Agreement.
- 5.28 It is also apparent from the reason for refusing the western extension application (and the S73 application) that RCTs concern relates to the alleged amenity impact of quarrying operations taking place within 200m of sensitive properties. It follows that this concern does not arise in terms of quarrying operations at greater distances, and there should thus have been no difficulty in imposing a condition on the grant of planning permission for the extension application that required quarrying in the extension area to be confined to distances greater than 200m from sensitive development.
- 5.29 I therefore conclude that the appeal should be allowed, and permission should be granted for the development on the basis of the need for the development and the socio-economic benefits which it would bring, notably:
- The need for the development in terms of maintaining 'a steady and adequate supply' (ref PPW11 para 5.14.1).
  - The need to release additional reserves of crushed rock in RCT, acknowledged by the identification of the preferred area in the LDP; the context provided by the RTS at the time of adoption, now reinforced by RTS2; and the contribution which RCT needs to make to regional supplies.
  - The absence of any alternative provision made for further mineral extraction in RCT via the LDP.
  - The importance of the HSA aggregate available at the quarry which is acknowledged as being a resource of UK importance the supply of which is to be afforded 'significant weight'; and
  - The socio-economic benefits of the quarry associated with employment both direct (quarry staff and haulage drivers), related managerial staff, and other indirect employment associated with servicing and maintenance including drilling and blasting contractors, static and mobile plant maintenance engineers, building maintenance contractors, site security, road sweeping and routine deliveries of fuel spares etc.

- 5.30 As part of the wider balance against need, I conclude that there are no significant amenity or environmental issues which would justify a refusal of permission, and all such amenity issues are capable of being controlled to within ‘acceptable limits’ and ‘standards’.
- 5.31 For the reasons set out in paragraph 5.21 above, I also consider that there are ‘*clear and justifiable reasons*’ for reducing the 200m buffer zone distance.

### Response to RCT’s ‘new case’

- 5.32 The Statement of Case (SoC) dated 26<sup>th</sup> January 2022 issued by RCT comprises a combined SoC dealing with both an appeal against the refusal of permission for the western extension to Craig yr Hesg Quarry, and an appeal against the refusal of the S73 application to extend the time period for the completion of quarrying and related operations at the existing Craig yr Hesg Quarry.
- 5.33 The western extension appeal is referred to in the LPA SoC as Appeal A, with the Section 73 time limit extension appeal referred to as Appeal B.
- 5.34 It is noted that in view of the decision to refuse both applications against the advice of the Planning Officer, RCT has sought external advice from a planning consultancy in relation to those reasons.
- 5.35 It is apparent from the SoC that the planning consultancy is not able to fully support and endorse the reasons for refusal as formally issued and has advised RCT to change its case to include different grounds for opposing the two applications.
- 5.36 It is noted that a report was presented to the Planning & Development Committee on 10th February 2022 to establish whether the members of the Committee shared the views of the planning consultancy regarding the (new) case to be presented at inquiry and to confirm what was in their mind at the time of determining the applications. This retrospective exercise is a transparent attempt to persuade the Committee to introduce additional reasons for refusal in order to attempt to bolster the case to be presented by RCT at the inquiry. (It is also the case that the issues raised were not in the minds of three of the members of the Committee on 10th February 2022 since they were not members of the Planning & Development Committee when the decision was made re the western extension application in July 2020, albeit the three members in question nevertheless voted for the resolution at the February 2022 Committee as to what they had in their minds though absent at the February 2020 Committee!).
- 5.37 This manoeuvring is unreasonable given that appeals have been lodged against decisions made by the LPA for the specific reasons set out in the decision notices. The appeals were not lodged against issues which may or may not have been in the minds of the Planning Committee (which were not set out in the reasons for refusal), and which are now set out in a Statement of Case after the appeals have been lodged. This is profoundly wrong and prejudicial. The Appellants are not entitled to amend their development scheme during an appeal process following the consideration of the application by the LPA, and it is unjust for a LPA to amend its reasons for refusal after formal decisions have been made.



- 5.38 I have referred above to the requirement of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 that in issuing a refusal of permission decision notice, the LPA must 'state clearly and precisely the full reasons for the refusal.....specifying all policies and proposals in the development plan which are relevant to the decision' (ref Article 24). In this case it is apparent that RCT did not seek to rely upon any development plan policies in support of the two decisions made, and that the single reasons for refusal, as set out, represented the 'full reason' for refusal.
- 5.39 I also note that the position which RCT now seeks to take in terms of 'what was in the minds of the members of the Committee' is simply not correct. At the July 2020 Committee which determined the western extension application, the Members expressly debated whether additional issues should be included as further reasons for refusal (CD 10.11). However, they concluded that the reason for refusal should be confined solely to the buffer zone / separation distance issue, and the resolution and single reason for refusal was agreed accordingly.
- 5.40 Notwithstanding the specific single reasons for refusal of the two applications, and the basis upon which the two appeals were lodged, the LPA's new case to be presented is based upon:
- An allegation that the baseline noise data which supports the noise assessments undertaken for the two applications is inadequate and not up to date.
  - A similar allegation that up-to-date dust monitoring data is not available; and
  - The contention that the developments are not in accordance with the RCT local development plan policies CS10, AW5 and AW10.
- 5.41 None of these issues are referred to in the reason for refusing the western extension (or S73 time extension) applications. However, I make the following response to the new issues now raised by RCT:
- (i) Baseline Noise Surveys**
- 5.42 No criticisms were made by RCT to the approach to the noise studies undertaken and reported in the western extension Environmental Statement (ES) (May 2015) (CD1.2), or in the western extension Supplementary ES (SES) (February 2021) (CD2.9), or in responses from RCT's Public Protection Officer during the circa 6 years between the submission of the application in May 2015 and determination in July 2020. Similarly, the review of the completeness of the ESs undertaken by the Planning Inspectorate similarly raised no concerns regarding the adequacy of the noise assessments and the nature of the baseline noise data upon which the assessments were founded (noting that the SES expressly provided an updated noise study in response to concern regarding the age of the original 2014 noise study which informed the 2015 ES).
- 5.43 However, whilst it is disappointing that such belated concerns have been raised, and notwithstanding the Appellant's (and Planning Inspectorate) view of the adequacy of the existing noise data, the matter has been addressed by agreeing a programme of additional

baseline noise monitoring, and related analysis. This has been pursued in discussion with the consultants acting on behalf of RCT and is addressed in the evidence of Rachel Canham.

### (ii) Baseline Dust Surveys

- 5.44 Similarly, no criticisms have been made by RCT (or in the Planning Inspectorate ES completeness reports referenced above) regarding the approach to the dust assessment and the monitoring data relied upon. Additional monitoring data is available and has been made available to RCT, but the issue will be further addressed in the evidence of Katrina Hawkins (and in the SoCG).
- 5.45 RCT's new case thus relies upon alleged deficiencies in the noise and dust impact surveys, with a consequent failure to demonstrate that the amenities of nearby residents can be adequately protected, and further, in such circumstances 'clear and justifiable reasons' have not been provided for mineral extraction and related activities to take place at a separation distance from sensitive development which is less than the 200m buffer zone distance identified in MTAN1.
- 5.46 It follows that if the alleged survey deficiencies can be addressed to the satisfaction of RCT's consultants, then there is no basis for contending that the amenity of local residents cannot be protected, there is no basis for concern regarding encroachment into the buffer zone, and there is no basis for alleged non-compliance with development plan amenity policies. As at the date of finalising this evidence the issue has been resolved in terms of the noise baseline surveys.

### (iii) Conflict with the development plan

- 5.47 Neither of the single reasons for refusal of the two applications make any specific reference to alleged conflict with development plan policies. However, the **new** case now advanced by RCT is a very narrow interpretation of the development plan based upon isolated amenity references in policy, for which there is no objective evidence of non-compliance, and where the concerns are focused on survey procedural issues, not previously raised, but which can be addressed.
- 5.48 In contrast, the key policy of the development plan relating to the western extension 'preferred area' (SSA25) is given scant regard in the RCT SoC, albeit with confirmation of no conflict with this key policy. The contention that the development would overall be contrary to the development plan is thus incorrect: the western extension is manifestly in accordance with the key policy of the development plan (SSA25), and the difference between the two parties relates to the weight to be afforded to the balancing amenity protection policies.
- 5.49 In considering whether a proposal is in accordance with the development plan (and Welsh Government Policy) it is not necessary for a proposal to accord with each and every policy in a development plan, since there will be instances where policies pull in different directions. This principle has been established in R v Rochdale MBC ex parte Milne (2000) where it was stated by Sullivan J that:

*“It is not at all unusual for development plan policies to pull in different directions. A proposed development may be in accord with development plan policies which, for example, encourage development for employment purposes, and yet be contrary to policies which seek to protect open countryside. In such cases there may be no clear cut answer to the question: is this proposal in accordance with the plan?”*

*The local planning authority has to make a judgement bearing in mind such factors as the importance of the policies which are complied with or infringed, and the extent of compliance or breach”.*

- 5.50 In City of Edinburgh Council v Secretary of State for Scotland (1997), Lord Clyde stated in similar terms that:

*“in the practical application of Section 18.8 (38[6]), it will obviously be necessary for the decision maker to consider the development plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them..... there may be some points in the plan which support the proposal but then may be some considerations pointing in the opposite direction. He will require to assess all of these, (and) then decide whether in the light of whole plan the proposal does or does not accord with it.”*

- 5.51 Sullivan J in the Rochdale case, having referred to the City of Edinburgh Council case, concluded that:

*“in the light of that decision I regard as untenable the proposition that if there is a breach of any one policy in a development plan a proposed development cannot be said to be ‘in accordance with the plan’. Given the numerous conflicting interests that development plans seek to reconcile..... it would be difficult to find any project of any significance that was wholly in accord with every relevant policy in the development plan..... for the purposes of Section 54A (38[6]) it is enough that the proposal accords with the development plan considered as a whole. It does not have to accord with each and every policy therein”*

- 5.52 Similar comments were made by Ouseley J in R v London Borough of Camden, where it was stated that:

*“it may be necessary for a council in a case where policies pull in different directions to decide which is the dominant policy: whether one policy compared to another is directly as opposed to tangentially relevant, or should be seen as the one to which the greater weight is required to be given.....There is a real risk (in a) suggestion that each individual relevant policy had to be examined against the proposal, and the implication that a breach of one necessarily shows a proposal out of accord with a development plan would impose a legalistic straightjacket upon an appraisal which cannot sensibly be made in such a manner”.*

- 5.53 In this context, the RCT ‘new case’ which relies upon identifying isolated policies which the development is allegedly not in accordance with is not the correct approach to decision making. The ‘dominant policy’ in this case is the identification of an extension to Craig yr Hesg Quarry as a ‘preferred area’ for future quarrying (ref policy SSA25) and the related policy objective to maintain a minimum 10 year landbank of permitted reserves (ref policy CS10). This is the minerals planning strategy of the LDP, and it is incorrect for RCT to now

(belatedly) state that the development is not in accordance with the development plan based upon alleged conflict with amenity protection policies.

- 5.54 The most that RCT can suggest is that the development is not in accordance with a number of subordinate amenity protection policies (which I contest), but the development is not contrary to the development plan as a whole. As a result, I disagree with the new RCT case and proposition that, as a result of alleged non-compliance with the development plan, other material planning considerations are needed to outweigh the conflict with the development plan.
- 5.55 This is an incorrect approach. The development plan balance is one between the 'dominant' development plan mineral strategy policies (preferred area SSA25 and provision of a 10 year landbank CS10), with the amenity protection policies (CS10 AW5 and AW8), where, in my view, the balance falls very heavily in favour of the dominant mineral planning policy, noting that I do not accept conflict with the amenity protection policies cited, properly interpreted against the wording of these policies.
- 5.56 I am re-enforced in that view by there being no blast, vibration, air quality or technical health objections in terms of the ability to comply with 'acceptable proven safe limits' (CS10). Similarly, subject to addressing the belated issues re the noise and dust surveys, there is no basis for suggesting that these issues would similarly not be able to be contained within 'acceptable proven safe limits'. It follows that in those terms, the effects would not constitute 'significant impacts' which would be contrary to policies AW5 and AW8.
- 5.57 The overall planning balance also needs to recognise that there are no technical objections to the development in terms of landscape, visual impact, ecology, highways, hydrology and hydrogeology or cultural heritage.
- 5.58 For the above reasons, I conclude that the balance should fall heavily in favour of the western extension appeal being allowed.

## 6.0 THE S73 TIME EXTENSION APPEAL

### Response to the Reason for Refusal

6.1 The S73 time extension appeal was originally lodged in September 2021 against the failure of RCT to determine the application within the prescribed time period. The Appeal was accompanied by a Statement of Case which set out the Appellants arguments in support of the time extension request being allowed on appeal.

6.2 The application was subsequently determined by RCT within the one month 'dual jurisdiction period' via a decision notice issued on 8<sup>th</sup> October 2021 when the application was refused for the following reason:

***'The additional period of 6 years proposed for the working of the quarry unacceptably extends the period of mineral operations within 200m of sensitive development within Glyncoch. Glyncoch is a deprived community, and such communities are acknowledged as being disproportionately affected by health problems. The continuation of quarrying within 200m of that community extends the impacts of quarrying (especially in terms of noise, dust and air quality) to the detriment of the amenity and well-being of residents contrary to the well-being goal of a healthier Wales as set out in the Well-being of Future Generations (Wales) Act 2015. The need for the mineral does not outweigh the amenity and well-being impacts'.***

6.3 A Supplementary Statement of Case (SSoC) was submitted by the Appellants in December 2021 in response to the specific reason for refusal and the conversion of the 'non-determination appeal' into an appeal against the refusal of permission for the reason stated by RCT.

6.4 As was the case with the determination of the western extension application, in his Report to the RCT Planning & Development Committee on 26<sup>th</sup> August 2021, the Planning Officer advised the Committee that the economic need for the mineral has been clearly demonstrated, the effects of quarrying can be controlled to nationally set standards by planning conditions, and that there is an overriding economic need for the mineral which is not outweighed by any potential environmental and amenity issues.

6.5 This advice was not accepted by the members of the Committee who expressed the view that the proposal would be detrimental to the amenity and well-being of local residents. They accordingly resolved that the application be deferred to allow a further report to be presented highlighting the potential strengths and weaknesses of making a decision contrary to the officer recommendation.

6.6 The requested Report was presented to Committee on 7<sup>th</sup> October 2021 where the Report provided a detailed appraisal of the issues and concerns raised by members at the Committee Meeting on 26<sup>th</sup> August, and, inter alia, included the following advice:

*.....there is a fundamental weakness in referencing adverse impacts on health and air quality as a reason for refusal of this application. Specifically, Cwm Taf Morgannwg University Health Board and Public Health Wales both indicate that local air quality is*

*compliant with the relevant PM10 AQO. In addition, they confirm that subject to satisfactory checks of the underpinning data used to inform the impact assessments supplied by the applicant and provided the site is operated using best available techniques to control emissions, then they have no grounds for objection based upon public health considerations. In addition, Council's Public Health, Protection & Community Services consider that processes at the quarry can be managed to ensure a limited impact upon the level of air quality and neighbour amenity in respect of particulate matter and therefore the application is considered to be acceptable in this respect.*

6.7 In this context, as highlighted by another witness (Andrew Buroni), it is important to note that no evidence of a health impact has been presented by any party and no health stakeholder has objected on health grounds.

6.8 In relation to a 200m separation distance between quarries and sensitive development, the Planning Officer advised that:

*Minerals Technical Advice Note (MTAN) 1: Aggregates (Paragraphs 70 and 71) identifies a suitable minimum distance between hard rock quarries and sensitive development as 200 metres. It states that any reduction from this distance should be evidenced by clear and justifiable reasons. It is acknowledged that parts of the quarry are within 200 metres of housing. An assessment must therefore be made in the context of Policies CS10, AW5 and AW10 of the Local Development Plan. These policies essentially seek to ensure no unacceptable harm to or significant impact on the amenities of neighbouring occupiers as a result of development.....*

*It has been acknowledged that, due to its nature, location and scale the winning and processing of mineral at Craig Yr Hesg Quarry will inevitably have an influence, to some degree, on environmental noise and the risk of annoyance dust. Local engagement, undertaken as part of the application, suggest that the perception of the above environmental factors may support increased anxiety and concern within the local community. This may be further exacerbated about certain inherent uncertainties often associated with the evaluation of well-being impacts. It is possible these additional well-being impacts can, if not successfully mitigated by robust control mechanisms, monitoring and oversight, result in a reduction of local community amenity compounded by a lack of community confidence hindering possible mitigation. However, these robust control mechanisms can be imposed within suitable planning conditions and within any Environmental Permit issued for the plant.*

6.9 In relation to 'need' the Planning Officer advised that:

*.....the original report set out in detail the need for additional crushed rock reserves within the County to comply with Policy CS10(1) of the Local Development Plan and the requirements of the Regional Technical Statement for Aggregates – 2nd Review. If this application is refused it should be noted that this need will increase significantly. Alternative arrangements to meet that need will have to be made by the Council in order to comply with Policy CS10(1) of the LDP and Welsh Government Policy.*

6.10 The Planning Officer thus reiterated his recommendation originally made to the August 2021 Committee that permission be granted, but the Report indicated that if having considered

the advice, Members remain of a mind to refuse planning permission, then the possible wording of a reason for refusal was suggested which would reflect the views of the Committee. The application was refused for the suggested reason, as quoted in paragraph 6.2 above.

6.11 The reason for refusal alludes to 4 issues: associated with:

- (i) a continuation of quarrying operations within 200m of sensitive development
- (ii) alleged / perceived detrimental effects on amenity and well-being of the community of Glyncoch associated with quarrying which RCT define as a 'deprived community' acknowledged as being disproportionately affected by health problems.
- (iii) detriment to the well-being goal of a healthier Wales as set out in the Well Being and Future Generations Act 2015; and
- (iv) the need for the mineral does not outweigh the (alleged / perceived) amenity and well-being impacts.

6.12 I consider these issues below.

**(i) MTAN1 200m separation distance**

6.13 As noted in Section 5.0 of my proof, the western extension reason for refusal makes specific reference to MTAN 1 paragraphs 70 and 71 which provides advice regarding a 200m separation distance and the need for clear and justifiable reasons for a reduction in that distance. I have set out in that section what I consider to be the required 'clear and justifiable reasons' in relation to that development, but I note here in relation to the Section 73 appeal that the S73 reason for refusal makes no reference to MTAN 1.

6.14 The S73 reason for refusal does make reference to concerns associated with a continuation of quarrying within 200m of Glyncoch community. However, reference to the phased quarry development plans accompanying the S73 application confirms that there would be no further quarrying within 200m of the closest sensitive properties on the edge of Glyncoch at Pen y Bryn and Gardner Close. All future quarrying to the south of those properties would be beyond 200m, separated by a belt of woodland, and with quarrying taking place increasingly at depth and increasingly beyond 200m from the properties as the development focuses on quarrying in the central area of the quarry (rather than on the periphery).

6.15 There is a separate reference in the reason for refusal to 'mineral operations' within 200m of sensitive development within Glyncoch', although this distinction between quarry and mineral operations is not defined or interpreted in the reason for refusal. If 'mineral operations' is to be construed as including haulage and processing as operations related to 'quarrying', then this issue is addressed by the Planning Officer in both the August and October Committee Reports to the effect that processing operations are subject to 'robust control mechanisms' via planning conditions and an Environmental Permit to ensure successful mitigation and monitoring.

- 6.16 In that respect it should be noted that PPW11 advises that ‘the planning system should not be used to secure objectives which are more appropriately achieved under other legislation. The aim should be to maintain the principle of non-duplication’ (ref PPW11 para 1.21). In essence, this means that with a detailed Environmental Permit in place covering the processing and related operations at the quarry, this should be relied upon to secure adequate control over such operations. At Craig yr Hesg Quarry, only processing and haulage operations are within 200m of sensitive development (as opposed to extraction operations) and these operations are separately controlled and monitored via the Permit.
- 6.17 It is further noteworthy that in the determination of the western extension application, RCT were implicitly content that the existing ROMP planning conditions and Permit controls were adequate in that no reference is made to any adverse amenity or well-being effects associated with the ongoing operations of the processing plant for what was a longer time period associated with the extension development (25 years as opposed to the S73 requested 6 years).
- 6.18 The western extension application included a consolidation scheme which incorporated quarrying and processing operations within the existing quarry and a requested time extension for the continuation of quarrying and processing within the existing quarry for an additional 25-year period. In that respect, it is noteworthy that the reason for refusal of the western extension and consolidation proposal is confined to a concern regarding an encroachment of extraction operations within the extension area within 200 of sensitive development. There is no reference or concern expressed in that reason for refusal to issues associated with ongoing extraction, processing and haulage in the existing quarry, with respect to health, amenity or well-being issues, or to the need for the mineral not outweighing the alleged / perceived amenity and wellbeing impacts.
- 6.19 This was a logical stance on the part of RCT at the time (and in formulating LDP policy SSA25 re the western extension) since if it was deemed that the continuation of operations in the existing quarry would be unacceptable in amenity terms (and contrary to the amenity protection policies CS10, AW5 and AW10), then it would have been illogical for RCT to promote a western extension to the quarry (SSA25) with an implicit time extension for the continuation of operations in the existing Quarry, and an implicit acceptance that the existing operations can continue to be regulated in an acceptable way. The new position now taken by RCT is illogical and represents the very absence of ‘rational decision making’ urged by PPW11.
- 6.20 My conclusion, based upon the content of the ES submitted in support of the Section 73 application, the responses of technical consultees, and the evidence of other witnesses at this inquiry, is that operations in the existing quarry can continue for the requested additional time period in a way which will not give rise to unacceptable harm or significant impact to the amenity and wellbeing of residents in the locality.
- 6.21 It is noteworthy that this was the position of RCT in determining the Environment Act ROMP Review application in 2013 via the conditions which were imposed, and which were deemed adequate by RCT to satisfactorily regulate operations at the quarry. Ordinarily, in the absence of the time limited planning condition, these conditions would have remained in



place for the 15 year ROMP Review cycle, which would have generally coincided with the 2028 end date requested by the S73 time extension application.

- 6.22 In addition, it is evident that the ROMP conditions were deemed to be adequate to regulate the development to within ‘acceptable proven safe limits’ and ‘acceptable standards’ from the date of the ROMP determination in 2013 up to the current time limit of 2022 for the completion of quarrying operations. In the absence of any material change in circumstances, there is no reason why these or similar conditions could not be imposed for the requested additional 6 year period to allow the operation to continue in accordance with ‘acceptable proven safe limits’ and ‘acceptable standards’.

**(ii) Amenity and well-being issues**

- 6.23 The amenity, well-being and health issues are dealt with by other witnesses, but in planning terms, I note that in offering a reason for refusal in the October 2021 Committee Report, the Planning Officer did not suggest any objective basis for concern regarding amenity effects (noting in particular that no objections had been raised by RCT’s Public Protection Officers), nor did he indicate that impacts would be ‘significant’ or could not be maintained within ‘acceptable standards’ to the extent that such effects would be contrary to planning policy which seeks to regulate such effects. It is also noteworthy that no objection from any health stakeholder has been presented. This underpins the Planning Officers’ recommendation that permission be granted for the requested S73 time extension.

**(iii) Well-Being of Future Generations Act (WBFGA) 2015**

- 6.24 The original S73 SoC provides a commentary on the WBFGA and the seven well-being goals and ‘five ways of working’ set out in the WBFGA, with cross references to Planning Policy Wales (Edition 11) (PPW11), the Planning (Wales) Act 2015 and the Environment (Wales) Act 2016 (ref SoC paras 5.19 – 5.42). These issues are dealt with further by another witness (Owen Jones).
- 6.25 As I have noted above in the planning policy conclusions in Section 4.0, it is fundamentally incorrect for the reason for refusal to focus on a single well-being goal (a ‘healthier Wales’), without reference to the other well-being goals and without any analysis which considers the respective weight of the goals in this particular case. ‘Cherry picking’ one goal to suit the needs of a reason for refusal is not the approach required by the WBFGA, and it is not consistent with the ‘ways of working’ required by the WBFGA to achieve sustainable development.

**(iv) The need for the development**

- 6.26 The reason for refusal alleges that the need for the development does not outweigh the amenity and well-being impacts.
- 6.27 This is not a view shared by the RCT Planning Officer who in the August 2021 Committee Report concluded that:

*...."the effects of the proposal can be mitigated and managed to an acceptable level where they have a minimal impact on sensitive developments surrounding the site" (and) "There is a clear need for additional reserves of crushed rock to be released in RCT to meet the RTS requirements and comply with policy CS10(1) of the LDP. If existing reserves are no[t] maintained at Craig yr Hesg that need will be exacerbated significantly".*

6.28 The Planning Officer reached a similar conclusion on 'need' in the October 2021 Committee report, noting that:

*...."the original report set out in detail the need for additional crushed rock reserves within the County to comply with Policy CS10(1) of the Local Development Plan and the requirements of the Regional Technical Statement for Aggregates – 2nd Review. If this application is refused it should be noted that this need will increase significantly. Alternative arrangements to meet that need will have to be made by the Council in order to comply with Policy CS10(1) of the LDP and Welsh Government Policy".*

6.29 An analysis of the need for the development is set out in Section 3.0 of my evidence from which I conclude that there is a compelling case of need to allow the remaining permitted reserves at the Quarry to be extracted via the requested time extension in terms of the quality of the HSA aggregate involved (to be afforded 'significant weight'), the local and national planning policy commitment and requirement to maintain a minimum 10 year landbank of crushed rock reserves, where the declining landbank would be exacerbated if the remaining reserves at Craig yr Hesg Quarry are removed from the landbank in December 2022.

6.30 The RCT SoC accepts that there is a need for the development, but that the need in this instance is insufficient to outweigh the amenity harm which would arise from a continuation of the development for the requested additional 6-year period. This is clearly the central issue between the main parties in terms of the weight to be afforded to need against the amenity effects arising from a continuation of operations for the requested additional 6 year period. For the reasons I have set out, in identifying a 'preferred area' extension to the Quarry, there is an implicit acceptance that the current amenity effects of operations in the existing quarry can be adequately regulated, and I agree with that position. It follows that I consider that the need and sustainability benefits of extracting the remaining permitted reserves within the requested additional time period outweighs the amenity effects given that those effects are acceptably regulated by existing planning conditions (and the Environmental Permit).

6.31 In summary, and in response to the reason for refusal, I thus contend that:

- (i) The operations in the existing quarry can continue for the requested additional time period in a way which will not give rise to unacceptable harm or significant impact to the amenity and wellbeing of residents in the locality based upon robust control mechanisms currently in place via planning conditions and an Environmental Permit.

- (ii) The alleged amenity and well-being impacts are contrary to the Planning Officers own findings and the findings of technical consultees and are not founded upon any alleged conflict with policy in the development plan.
- (iii) It is incorrect for the reason for refusal to focus only on the WBFGA well-being goal of a 'healthier Wales' without reference to the other six well-being goals and without any analysis which considers the respective weight of the goals in this particular case. Moreover, no evidence of a health impact has been presented by any party and no health stakeholder has objected on health grounds.
- (iv) I agree with the Planning Officer conclusion that there is 'a clear need for additional reserves of crushed rock to be released in RCT to meet the RTS requirements and comply with policy CS10(1) of the LDP' (ref August 2021 Committee Report).

### **Response to RCT's new case**

- 6.32 I have addressed in paragraphs 5.31 – 5.40 above the 'new case' which RCT wishes to advance at the inquiry, and the procedural points I have raised apply similarly to the 'new case' now advanced by RCT in relation to the Section 73 appeal.
- 6.33 At the time of determination of the S73 application, RCT were obliged to state clearly and precisely the full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision (ref Article 24 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012). The Appellants have responded to the stated reason for refusal accordingly via a Supplementary Statement of Case (SSoC) following the conversion of the appeal from the original appeal against 'non-determination'. In that SSoC reference was made to the absence of any policy basis for the refusal.
- 6.34 However, similar to the new case in relation to the western extension appeal, and notwithstanding the 'full reason for refusal' set out in the Section 73 decision notice, RCT wish to advance a 'new case' based upon alleged deficiencies in the approach to the noise and dust studies, alleged conflict with development plan policies CS10 AW5 and AW10, and the absence of any other material considerations which would outweigh the conflict with the development plan, in effect the same case as they wish to present in opposition to the western extension appeal (albeit the issues associated with the two appeals are different, as evident from the actual decision notices and the reasons for refusing the respective applications).
- 6.35 As noted above, the alleged deficiencies with the noise and dust surveys are not shared by the RCT Public Protection Section, but in any event, the issues raised are readily capable of being addressed, as discussed by other witnesses, and as at the date of finalising this evidence, the issue regarding the baseline noise surveys has been addressed.
- 6.36 Again as noted above, I do not accept that the development would be in conflict with the amenity protection policies cited, and other than assertions of impact, and contrary to

reasoned judgements set out in the Section 73 ES, there is no technical evidence advanced by RCT to demonstrate that the development could not proceed within 'acceptable proven safe limits' (CS10), or that it would give rise to 'significant impact' (AW5) or 'significant adverse risk'(AW10).

- 6.37 Further, and again as noted above, I consider that the 'dominant policy' in the RCT LDP is the identification of an extension to Craig yr Hesg Quarry as a 'preferred area' for future quarrying (ref policy SSA25) and the related policy objective to maintain a minimum 10 year, landbank of permitted reserves (ref policy CS10). Given that this is the minerals planning strategy of the LDP, it is perverse for RCT to resist a Section 73 time extension request to allow operations to continue at the Quarry given that such a continuation is implicit and inherent in the minerals planning strategy of the LDP.

## 7.0 RESPONSE TO LIST OF TOPICS AND ISSUES HIGHLIGHTED BY INSPECTOR

### SECTION 73 APPEAL:

- 7.1 On 16<sup>th</sup> March 2022 PEDW issued a list of inquiry topics with respect to the S73 time extension appeal. (PEDW also confirmed that a separate list would not be issued for the western extension appeal which is proceeding under different inquiry regulations which do not make provision for the issuing of such a list of inquiry topics).
- 7.2 The list confirmed that the main issue in this appeal is *'the effect that varying the conditions would have on the living conditions of neighbouring occupiers, with particular reference to noise, dust and air quality, blasting and traffic'*.
- 7.3 These technical issues are addressed in the evidence of other witnesses, albeit noting that air quality, blasting and traffic are not issues being raised by RCT in the evidence which they intend to present at the inquiry.
- 7.4 However, as a brief summary response to the other topics listed by PEDW, and as a signpost to evidence and other documents, I make the following comments:

#### Relevant planning history

- 7.5 The planning permissions for the extraction of sandstone at Craig yr Hesg Quarry are listed in Section 3.0 of the (draft) SsoCG for the western extension and S73 time extension appeals and are discussed further in Section 2.0 of the Appellants Western Extension Statement of Case (SoC) (December 2020), and in Section 2.0 of the Appellant's S73 Statement of Case (SoC) (September 2021).
- 7.6 The key element of planning history of relevance to the Section 73 appeal is Environment Act 'ROMP' review application submitted in August 2008 as part of the process of updating the planning conditions regulating the ongoing quarrying and related operations. An EIA was subsequently undertaken, and an Environmental Statement (ES) in support of the application was submitted in July 2010. The ES considered the environmental effects of the ongoing operation and made a series of recommendations for environmental and amenity mitigation measures which could be translated into updated planning conditions. RCT determined the application in April 2013 with the issuing of a schedule of 49 planning conditions to apply to the current four mineral planning permissions in place at the quarry (ref 08/1380/10).
- 7.7 The conditions are comprehensive in terms of the environmental and amenity controls which are placed on the ongoing operation in terms of noise and blast vibration limits, dust controls, and a suite of measures designed to minimise the environmental and amenity effects of the ongoing operation and ensure that the overall quarry site is comprehensively restored upon completion of quarrying.
- 7.8 In determining the application and issuing the decision notice, RCT were satisfied that the schedule of conditions would be adequate to ensure the protection of the amenities of local

residents, otherwise additional conditions would have been imposed or other control measures would have been taken.

- 7.9 In policy terms, in determining the ROMP application in accordance with the development plan, it is also the case that the conditions were deemed to be adequate to ensure that the development continued to operate within ‘acceptable proven safe limits’ (CS10) and without giving rise to ‘significant impact’ (AW5) or to ‘significant adverse risk’ (AW10)

### **Relevant Planning Policy**

- 7.10 Mineral Planning Policy is discussed in detail in Section 4.0 of my evidence. Another witness (Owen Jones) discusses wider planning policy set out in PPW11 and the context provided by the WBFGA.

### **Well-being of Future Generations (Wales) Act 2015**

- 7.11 As noted above, the principles enshrined within the WBFGA are discussed in the evidence of Owen Jones. They are further referenced in Sections 5.0 of the Appellants Western Extension SoC and Section 73 Time Extension SoC and SsoC.

### **Need i.e. landbank (how much mineral is actually available), are there any alternatives?**

- 7.12 The issue of ‘need’ is discussed in Section 3.0 of my evidence and in the SsoCG.
- 7.13 In terms of mineral availability and alternatives within RCT, there have recently been only three quarries within the RCT administrative area – Craig yr Hesg, and two limestone quarries at Hendy, near Llantrisant, and at Forest Wood, near Pontyclun.
- 7.14 Hendy Quarry, operated by Tarmac Ltd has very limited or no remaining reserves and is effectively exhausted. The planning permission for extraction at Hendy expires in 2024.
- 7.15 Forest Wood Quarry is a former Hanson UK quarry, now operated by Ryan Jones Group Limited. Whilst it contains remaining reserves of approximately 3.5m tonnes, the quarry is not currently operating to any significant extent since it is constrained by a number of technical and practical issues, including the need to obtain an abstraction licence and discharge consent before pumping out a very large body of water which has accumulated within the quarry. In any event, Forest Wood, if operated, would supply a different market compared to the HSA aggregate market supplied by the sandstone at Craig yr Hesg Quarry, where the product types are not interchangeable.
- 7.16 That distinction is important in that the Pennant Sandstone at Craig yr Hesg Quarry has a Polished Stone Value (PSV) of +68 to 70 and an Aggregate Abrasion Value of <10, making it one of the highest quality sources of skid resistant surfacing aggregate not only in South Wales, but the UK.
- 7.17 I recognise that there are other quarries elsewhere in South Wales which collectively make a contribution towards aggregate supply in South Wales and beyond. However, the reserves at those quarries form part of the landbanks within the respective administrative areas within which they are situated and are part of the managed aggregate supply enshrined in RTS2 where, as required by PPW11 ‘each Mineral Planning Authority should ensure that it

*makes an appropriate contribution towards meeting local, regional and UK needs for primary minerals'* (ref PPW11 para 5.14.10). In this context, as I have noted in paragraphs 3.34 - 3.36 above, it is unreasonable for RCT to decline to endorse RTS2 and the contribution which RCT should make to regional supplies as part of a managed aggregate supply system and, if not rectified, the practical effect will be to 'export' the supply requirement from RCT to other Authorities.

**Living conditions considerations – How would the time extension impact on any receptors / what has changed to the impacts that were previously assessed as acceptable for them now to be unacceptable?**

- 7.18 The amenity effects on the living conditions on receptors in the vicinity of the quarry were systematically assessed as part of the EIA undertaken as part of the Environment Act ROMP Review. The outcome was a comprehensive schedule of updated and modern planning conditions deemed by RCT to be adequate to minimise impacts on receptors (as also discussed in paragraphs 7.5 – 7.8 above and elsewhere in my evidence).
- 7.19 Four elements have changed since the determination of the ROMP application, all of which represent improvements in amenity terms.
- 7.20 Firstly, a new two-way access road has been constructed, based upon a planning permission issued by RCT in March 2014 (ref 13/1039/10). This new access replaces the historical arrangement of vehicles exiting the quarry via a route with a steep incline down to a junction with the B4273, where visibility at that junction is restricted, and where the exit route was shared with light vehicles accessing adjacent residential properties. The new two-way access road at the former 'entrance only' junction has provided a modern appropriately engineered access road and junction arrangement with the required visibility splays. The access road is fully surfaced and includes a water spray system to minimise dust (water sprays were not present on the original exit road). The new access road was completed in 2015, with the former egress road now retained simply as a contingency for 'emergency use' but which in practice is unused.
- 7.21 Secondly, the air quality study undertaken as part of the ROMP EIA made reference to a PM10 Emissions Action Plan, which set out a series of measures designed to minimise dust and PM10 emissions at the quarry. The identified measures were in the process of being implemented at the time of submission of the ROMP application, but with a commitment to the ongoing implementation of improvement measures. These issues are discussed further by another witness (Katrina Hawkins), but in response to 'what has changed' the answer is a series of additional mitigation measures which have served to further reduce PM10 and dust emissions at the Quarry. The original 'Emissions Action Plan' has now been supplemented by a Dust Management Plan (DMP) which accompanied the S73 application (ref S73 ES Appendix 11.7), and whilst this DMP has not been approved (by virtue of RCT's refusal of the application), the measures are being informally implemented at the Quarry.
- 7.22 Thirdly, quarrying operations have progressed within the existing mineral void to the extent that remaining reserves are largely confined to the lower benches within the central area of

the quarry, with no further quarrying to take place at high levels, and where future quarrying operations will now be more than 200m away from sensitive property.

- 7.23 Fourthly, the Appellants have taken the initiative to set up an enhanced Craig yr Hesg Quarry web site which allows for the regular posting of information regarding operations at the quarry, notably the scheduled dates and times of blasting operations. This is intended to be of assistance in providing advance notification of activities, and to avoid operations taking place which may give rise to concern because they are unannounced. In addition, blasting times are now notified via a new Notice Board erected at the quarry entrance.

**Why would the proposal have a greater impact on Glyncoch given that it has been defined as a deprived community?**

- 7.24 This issue is discussed by another witness (Andrew Buroni), who evidences that the existing burden of poor health and relative sensitivity is not associated with a poor-quality environment, but closely associated with socio-economic circumstance. In these circumstances he contends that the reference in the reason for refusal to deprivation and disproportionate effects is misplaced and incorrect.

**Implications for appeal ref 3265358 should this one fail and vice versa.**

- 7.25 In the event that the western extension and consolidation appeal is allowed, then the S73 Appeal would fall away given that the requested time extension would be subsumed within what would be a longer time extension associated with the extension development.
- 7.26 In contrast, if the western extension and consolidation appeal is not allowed, then the Appellants would hope that the S73 time extension appeal would be allowed to ensure that the remaining permitted reserves of HSA can be worked, thereby satisfying the need and sustainability benefits highlighted in my evidence.

**Any consequential effects of the scheme on the existing planning permission(s)/conditions.**

- 7.27 I have noted above that it is apparent that RCT have concluded that the existing ROMP schedule of planning conditions is adequate to regulate and control the existing quarrying, processing and related operations. Subject to a number of minor amendments and updates, these conditions could appropriately remain in place for the requested extended duration of operations and in my view would continue to be adequate in minimising the amenity and environmental effects for the short extended time period. A schedule of agreed conditions is included as part of the SoCG with a number of supporting comments.

**WESTERN EXTENSION APPEAL**

- 7.28 At the Pre-Inquiry Meeting (PIM) held on 17<sup>th</sup> March 2022, the Inspector indicated that the key issue associated with the western extension appeal would be set out in the notes of the PIM but that, in summary, the issue related to whether the *'development is in accordance with development plan and if not whether there are material considerations sufficient to outweigh this and any other identified harm'*.



- 7.29 These issues are addressed in Section 5.0 of my evidence where I reach firm conclusions that the development is in accordance with the 'dominant' development plan mineral strategy policies in terms of the identification of the western extension area as a preferred area for future aggregates extraction (policy SSA25), and the need to maintain a minimum 10 year landbank of crushed rock, where such a landbank is not currently in place and where additional reserves need to be released to provide the required minimum landbank (policy CS10).
- 7.30 For the reasons set out, I also conclude that the development would be in accordance with the development plan amenity protection policies (CS10, AW5 and AW8), where RCT adduce no technical evidence of non-compliance with those policies, properly interpreted against objective criteria and the policy wording of 'acceptable proven safe limits' (CS10) and whether the development would give rise to 'significant impacts' or 'significant adverse risk' (AW5 and AW10). There would be no 'significant' impacts or risks in this case.
- 7.31 There are no other material considerations which outweigh this positive development plan compliance, and none are advanced by RCT whose case is confined to subjective amenity concerns.



## 8.0 STATEMENTS OF COMMON GROUND

- 8.1 Two Statements of Common Ground (SsoCG) have been drafted, one for the western extension appeal and a second for the S73 appeal.
- 8.2 It is hoped that both will be finalised to coincide with the exchange of evidence.
- 8.3 The SsoCG have been drafted with the same general structure and for each appeal they provide a description of the appeal site, a description of the proposal, confirmation of the appeal plans, a summary of matters not in dispute, and a summary of issues not agreed.
- 8.4 In terms of the 'matters not in dispute, there is agreement on associated with the need for the development, the RTS2 requirement in terms of provision for crushed rock aggregate extraction, and a number of general issues associated with need which recognise the UK importance of the high specification aggregate which is available at Craig yr Hesg Quarry.
- 8.5 There is also agreement on the development plan policies of relevance to the development (albeit noting as I have done elsewhere in my proof that such policies are not cited in the reasons for refusal), and on key policy advice set out in PPW11 and MTAN1.
- 8.6 Reference is also made to an outstanding response from RCT to dust issues which may be capable of being addressed by a Supplementary SoCG dealing with that topic. RCT have confirmed that they will not be adducing technical evidence in relation to noise.
- 8.7 In summary, the differences between the parties are associated with the interpretation of policy, and the balance of the weight to be afforded to the need for the development against environmental and amenity protection policies.
- 8.8 It is evident from the SsoCG that the RCT case is not founded upon any conflict with objective criteria against which amenity effects of quarry developments are to be assessed, notably the MTAN1 criteria relating to noise and blast vibration controls. All quarry developments are associated to some degree with issues of noise, blast vibration and dust, and that is the reason why MTAN1 sets objective criteria against which noise and blast vibration can be judged. There is nothing in Welsh Government policy or guidance to indicate that if technical guidance is met then some other subjective test should be applied. If assessments are to be based simply upon subjective amenity concerns, then there is no need for the Welsh Government Guidance set out in MTAN1.
- 8.9 Similarly, whilst Welsh Government policy in PPW11 (para 5.14.19) requires LPAs to identify areas for future aggregates extraction in development plans, if no proper regard is paid by RCT to the identification in their adopted development plan of a 'preferred area for future extraction as a 'clear guide' to where extraction is likely to be acceptable, then there is little merit in the development plan system identifying such areas since the development plan cannot be relied upon as a basis for rational decision making.
- 8.10 Further, if RTS2 is not to be endorsed by RCT, then there is little merit in Welsh Government commissioning RTS updates or in Welsh Government endorsing the content of the current RTS2 if they need to rely upon their default powers to intervene in the planning process if an Authority does not endorse the RTS.

- 8.11 The SsOCG agree that there is a need for the developments in terms of:
- (i) the high specification aggregate available at Craig yr Hesg Quarry, acknowledged to be of UK importance, the supply of which would cease if the extension development or the S73 time extension are not approved.
  - (ii) the limited current landbank which is made up of reserves at Craig yr Hesg Quarry and Forest Wood Quarry, and where the landbank would be substantially reduced if the existing reserves at Craig yr Hesg Quarry are removed from the landbank in December 2022; and
  - (iii) the requirements for RCT to make substantially greater provision for future aggregates supply as set out in RTS2 (a minimum of 19.125m tonnes).
- 8.12 Based upon these need issues, singly and combined, it is difficult to imagine (i) a more compelling case of need for the developments under consideration and, from RCT's perspective, (ii) what level of need would be required to make the developments acceptable when balanced against the acknowledged ability for the developments to comply with key objective amenity criteria set by Welsh Government.
- 8.13 These issues are discussed in my evidence where I draw firm conclusions regarding the ability to minimise environmental and amenity effects in accordance with the requirements of policy, and where in these circumstances the balance falls heavily in favour of the need for the respective developments.

## 9.0 COMMENTS ON THIRD PARTY REPRESENTATIONS

- 9.1 I recognise that both the western extension and S73 time extension applications have generated objections from local residents and other interested parties, who have raised a number of concerns associated with noise, blast vibration, air quality, dust, separation distances between the extension area and residential properties, access, ecological issues, planning policy matters, and a range of wider concerns.
- 9.2 As an overview, PPW11 recognises that minerals can only be worked where they are found, and by virtue of the nature of mineral extraction operations, there will always be some impact on the environment and amenity. The requirement is not that mineral developments should take place with no impact, but to ensure that the ‘significant’ effects are avoided, and that effects are regulated to within ‘acceptable limits’. It is therefore not credible to suggest that mineral development can take place with no adverse effects on any interest, and it is not part of the Appellant’s case, or my evidence, to suggest that the western extension development or a continuation of operations via the S73 time extension will not cause any environmental or amenity effects. For minerals developments, the underlying requirements are to:
- (i) Identify a site with a proven resource.
  - (ii) Design a development scheme which avoids ‘significant’ adverse effects and which incorporates appropriate mitigation measures.
  - (iii) Deal with any remaining residual impacts by other environmental measures and controls.
  - (iv) Mitigate those defined impacts to within ‘acceptable limits’, with appropriate engagement with the Planning Authority and other interested parties to refine the scheme and mitigation measures as part of a ‘collaborative way of working’; and
  - (v) Identify opportunities for landscape and bio-diversity enhancement via the restoration scheme, which reflects the collaborative way of working, the wider sustainability requirements for developments, and alignment with the WBFGA goals and the PPW11 five key principles for planning.
- 9.3 These mitigation measures and long-term benefits of the restoration scheme can then be considered through the EIA and planning determination process, and conclusions can be drawn as to whether the mitigation measures would successfully minimise effects to within ‘acceptable limits’(PPW11) and ‘acceptable proven safe limits’ (LDP policy CS10), and in a way which avoids ‘significant’ impact’ (AW5) and ‘significant adverse risk’ (AW10).
- 9.4 In this case a site has been identified with proven resources, and, as discussed in the planning policy section above, the LDP has concluded that there are no sites which provide a better

- alternative to that proposed via the Craig yr Hesg western extension 'preferred area' appeal site.
- 9.5 A detailed working and restoration scheme has been designed for the western extension area with both in-built mitigation measures inherent in the design (notably the screening landform around the eastern, northern and western sides of the extension area) and more general conventional mitigation measures in terms of environmental and amenity controls. For both the extension area development and the S73 time extension, the mitigation measures which are in place at the existing quarry via planning conditions would continue, where those controls have been deemed to be adequate to regulate the development to within 'acceptable limits'.
- 9.6 The responses of the technical statutory consultees corroborate the conclusions of the western extension and S73 ESs that the developments could proceed in a way which successfully minimises environmental effects. The detailed appraisals undertaken by the Planning Officer in his Committee Reports accepted that the measures designed to minimise impact were appropriate, and that they could be effectively applied by planning conditions.
- 9.7 The extent to which the Appellants have met the obligation to avoid unacceptable impacts and minimise / control amenity impacts to within acceptable limits can be judged by the responses from statutory consultees to the two applications and the detailed appraisals of the Planning Officer in his Committee Reports which confirmed that there were no issues which would justify a refusal of planning permission for either development.
- 9.8 It is thus my evidence, informed by the conclusions of the ESs, responses from technical consultees and the Planning Officer's appraisals of the two applications that all environmental and amenity issues associated with both appeal schemes can be appropriately regulated by planning conditions. This is particularly relevant for the S73 time extension where a schedule of conditions is already in place via the ROMP review which have been proven to work effectively in minimising effects, and which RCT were satisfied were adequate in ensuring that effects would not be 'significant' and where the effects could be controlled to within 'acceptable proven safe limits'.
- 9.9 In those terms, the existing ROMP schedule of conditions provides an appropriate template for a schedule of conditions which could similarly adequately control operations undertaken as part of the western extension scheme.

## 10.0 SUMMARY AND CONCLUSIONS

### THE WESTERN EXTENSION APPEAL

#### The need for the development

- 10.1 In mineral planning policy terms, the development would meet an acknowledged need for aggregate (reference LDP Policy SSA25 and CS10) in a way which is fully consistent with mineral planning policy objectives to minimise the effects of mineral extraction developments.
- 10.2 RCT are solely reliant upon an extension to Craig yr Hesg Quarry (SSA25) to meet its share of regional production referred to in the respective versions of the RTS, with no alternative aggregates mineral extraction site identified in the LDP. This reinforces the importance of the release of reserves at the site for extraction, and compliance with this key component of the development plan.
- 10.3 The significance of this is underlined by the fact that the aggregate reserves which are available comprise Pennant Sandstone, recognised as a 'high specification aggregate' (HSA) of strategic UK importance, the need for which is to be accorded 'significant weight' (ref PPW11 para 5.14.23).
- 10.4 MTAN1 also confirms that the Pennant Sandstone in South Wales should be treated as a '**special case**' in terms of supply, and urges planning authorities to recognise the UK importance of the resource (ref MTAN1 para 42)
- 10.5 PPW11 further confirms that it is 'essential to the economic health of the country that the construction industry is provided with an adequate supply of the minerals it needs'.
- 10.6 The Planning Officer's detailed and comprehensive analysis of the application set out in the February and July 2020 Committee Reports acknowledges the need for the development in terms of the identification of the extension area as a preferred area for future extraction; the contribution which the development would make to regional supply; the absence of any alternative areas identified for extraction within RCT; and the need to release additional reserves of crushed rock in order to meet landbank requirements (ref LDP Policy CS10 and MTAN1 para 49).
- 10.7 This need to release additional reserves consistent with LDP policies SSA25 re the western extension and policy CS10 re the maintenance of a minimum 10 year is re-enforced by the substantial additional RTS2 requirement to provide for the release of crushed rock reserves in RCT (a minimum provision of 19.125m tonnes for the 15 year plan and 25 year landbank period). This is a compelling reason to supplement the landbank via the release of additional reserves at the western extension appeal site. (At a lesser scale in terms of reserves, it is also a compelling reason to ensure that the currently permitted remaining reserves at Craig yr Hesg are not sterilised from December 2022 and thereby removed from the landbank, particularly in the context of the HSA quality of the reserves involved).

- 10.8 Set in the context of this acknowledged need and following a detailed analysis of environmental and amenity effects, the Planning Officer confirmed that there are no issues which would justify a refusal of the application and I agree with that appraisal.

### **The Reason for Refusal**

- 10.9 The reason for refusal is founded upon concern that the extraction operations would encroach within 200m of sensitive property and that there are no clear and justifiable reasons for reducing the 200m minimum distance. I have set out what I consider to be 'clear and justifiable reasons' in this case (ref para 5.21 above).
- 10.10 The concern expressed in the reason for refusal regarding the 200m 'buffer zone' distance could have been readily addressed by granting planning permission with the imposition of a planning condition which would prevent any quarrying operations within the proposed extension area taking place within 200m of existing sensitive development. This outcome is contrary to long established advice that planning permission should not be refused on a ground clearly capable of being dealt with by way of a condition.

### **RCT'S 'New Case' to be advanced at the inquiry**

- 10.11 RCT's 'new case' which departs from the reason for refusal is that there are shortcomings in the approaches to the baseline noise and dust surveys undertaken as part of the EIA, and that notwithstanding the absence of any planning policy references in the reason for refusal, the development would be contrary to LDP policies CS10, AW5 and AW10.
- 10.12 The issues raised in relation to the noise and dust surveys can be readily addressed and are referenced in the evidence of other witnesses (Rachel Canham and Katrina Hawkins). The resolution of these survey issues should remove the concern raised in the RCT 'new case' that it is not possible to demonstrate that the amenities of nearby residents can be adequately protected and that there is a consequent conflict with policies CS10, AW5 and AW8.
- 10.13 The consistent theme of both policy in the development plan and national planning policy is not a requirement to eliminate amenity impacts but to ensure that there are no '*significant*' impacts (LDP Policy AW5), and that where unavoidable impacts occur they are limited to within an '*acceptable proven limit*' (LDP Policy CS10), to within '*acceptable limits*' (PPW11 para 5.14.2), and to within an '*acceptable standard*' (PPW11 para 5.14.42).
- 10.14 I conclude that with 'limits and standards' applied by planning condition (as is the case at the existing Quarry), there would be no '*significant*' impacts, and that the '*limits*' and '*standards*' with respect to noise, blast vibration, dust and air quality can be applied and adhered to in all cases. There is no technical evidence to refute this from either RCT or any of the technical consultees, and, again, it is noteworthy that notwithstanding the belated RCT 'new case' the reason for refusal does not allege conflict with any of the policies in the LDP which relate to these limits and standards.
- 10.15 It follows that I do not accept that there is conflict with the policies of the development plan now cited, nor do I accept that in overall terms the development is not in accordance with the development plan. The RCT 'new case' is based upon isolated policies which the development is allegedly not in accordance with, rather than placing weight on the



‘dominant’ LDP policy of the identification of a preferred area as an extension to Craig yr Hesg Quarry (ref policy SSA25) and the related policy objective to maintain a minimum 10 year landbank of permitted reserves (ref policy CS10). This is the minerals planning strategy of the LDP, and it is incorrect for RCT to now (belatedly) state that the development is not in accordance with the development plan, and that other material planning considerations are needed to outweigh the conflict with the development plan. This is not discharging the requirement of PPW11 to provide positively for the working of mineral resources.

- 10.16 The most that RCT can suggest is that the development is not in accordance with a number of subordinate amenity protection policies (which I contest), but the development is not contrary to the development plan as a whole. Even if it were held that the development was in conflict with amenity protection policies, this would not render the development as ‘not in accordance with the development plan’ since such conflict would need to be balanced against the identification of the site in the development plan as a ‘preferred area’ for extraction, and the need to undertake an overall balance of need against amenity.
- 10.17 In that context, the development plan balance is one between the ‘dominant’ development plan mineral strategy policies (preferred area policy SSA25 and provision of a 10 year landbank CS10), with the amenity protection policies (CS10, AW5 and AW8), where, in my view, the balance falls very heavily in favour of the dominant mineral planning policy, noting that I do not accept conflict with the amenity protection policies cited, properly interpreted against the wording of those policies.
- 10.18 In addition, in terms of a wider planning balance, the weight to be afforded to the need for the development; the importance of continuity of supply; the special quality of the high specification aggregate; the economic importance of the development in terms of supply of the high specification aggregate; the absence of any material public health impact or ‘demonstrable harm’, and the socio economic benefits of the development are such that the balance should fall heavily in favour of the S73 time extension being approved.
- 10.19 I therefore formally request that the Inspector allows the western extension appeal based upon the scheme as submitted, subject to the Section 106 Agreement and conditions which have been agreed with RCT.
- 10.20 If notwithstanding my evidence, the Inspector is minded to conclude that a 200m separation distance between the western extension limits of extraction and sensitive property should be rigidly adhered to applied in this case, then, in the alternative, the Inspector is requested to allow the appeal subject to conditions which would preclude mineral extraction, and related processing and haulage operations within the extension area taking place within 200m of sensitive development, and to impose additional conditions as necessary to require that prior to the commencement of the development, updated phased quarry development plans shall be submitted to and approved by RCT confirming the required 200m separation distance.

## **THE S73 TIME EXTENSION APPEAL**

### **Planning Context**

- 10.21 The S73 application is a straightforward request for the currently permitted quarrying and related operations to be allowed to continue for an additional period of 6 years to provide time for the remaining permitted reserves to be extracted.
- 10.22 Other than changes necessary to reflect the requested revised end dates for quarrying and restoration activities, no changes are proposed to any of the remaining existing planning conditions, and no material changes are proposed to the currently approved quarry development scheme or restoration strategy.
- 10.23 The current quarrying and related operations are successfully controlled by a schedule of up-to-date modern planning conditions imposed via the ROMP Review, which regulate the existing operation to within acceptable limits, and where these or similar conditions could be imposed as part of a S73 time extension permission.

### **The need for the development**

- 10.24 The Quarry is producing HSA which is a resource of UK importance. It would not be in the interest of sustainable minerals planning to unnecessarily sterilise this currently permitted reserve.
- 10.25 PPW11 requires that the UK and regional need for such minerals should be accorded 'significant weight' provided environmental impacts can be limited to 'acceptable levels'. Impacts are and can continue to be limited to 'acceptable levels' in this case, and 'significant weight' should thus be given to the benefits associated with the extraction of the remaining permitted reserves.
- 10.26 PPW11 also requires Planning Authorities to 'provide positively for the working of mineral resources' and that 'each mineral planning authority should ensure that it makes an appropriate contribution to meeting local, regional and UK needs for primary minerals which reflects the nature and extent of resources in the area'. This requirement has been embraced by RCT via LDP policy CS10. A permission for the requested S73 time extension would 'provide positively' for the working of the permitted mineral resource and it would assist towards RCT's contribution to local, regional and UK needs. A refusal of the S73 time extension application would be contrary to these policy requirements.
- 10.27 In addition to the specific importance of the HSA available at the quarry, there is a general need for RCT to contribute to the supply of crushed rock aggregate via the maintenance of a minimum 10 year landbank of crushed rock reserves (ref LDP policy CS10 and MTAN1 para 49). The declining landbank would be exacerbated by the removal of the remaining reserves at Craig yr Hesg Quarry from the landbank if the quarry ceases operation in December 2022.
- 10.28 The unnecessary sterilisation of currently permitted reserves which would arise if the requested S73 time extension is not granted would be contrary to sustainable mineral planning and to the sustainability principles enshrined in PPW11 and the WBFGA.

- 10.29 There are no technical objections to the time extension request, which re-enforces the objective view that there is no reasonable basis for resisting the request for the quarry to continue in operations for the requested additional time period.
- 10.30 The Planning Officer has offered his professional judgment and advice to the Planning Committee that the economic need for the mineral has been clearly demonstrated, the effects of quarrying can be controlled to nationally set standards by planning conditions, and the economic need for the mineral is not outweighed by any potential environmental and amenity issues. I agree with that reasoned assessment.
- 10.31 My overall planning policy conclusion is that the development would be in accordance with the development plan (ref Section 38(6) of the Planning and Compulsory Purchase Act 2004) in term of the sustainability benefits it would bring, it would assist in maintaining a landbank of permitted reserves, and the operation can continue to be regulated to within acceptable limits.
- 10.32 In addition, in terms of a wider planning balance, and as is the case for the western extension appeal, the weight to be afforded to the need for the development; the importance of continuity of supply; the special quality of the high specification aggregate; the economic importance of the development in terms of supply of the high specification aggregate; the absence of any material public health impact or ‘demonstrable harm’, and the socio economic benefits of the development are such that the balance should fall heavily in favour of the S73 time extension being approved.

### **RCT’S ‘New Case’ to be advanced at the inquiry**

- 10.33 As is the case with the western extension appeal, notwithstanding the specific reason for refusal of the Section 73 application, RCT now wish to present a ‘new case’ with additional reasons for refusal which mirror the new case they wish to advance in relation to the western extension appeal. Not only is this change of case inappropriate in terms of the requirement at the time of determination to ‘*state clearly and precisely the full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision*’ but in this case the two proposals are different with different issues, and the attempt by RCT to conflate all issues into one case is misplaced.
- 10.34 However, as with the western extension appeal, RCT’s ‘new case’, which departs from the reason for refusal, is that there are shortcomings in the approaches to the baseline noise and dust surveys undertaken as part of the EIA, and that notwithstanding the absence of any planning policy references in the reason for refusal, the S73 development would be contrary to LDP polices CS10, AW5 and AW10. For the reasons set out above in response to the same ‘new case’ to be presented by RCT in relation to the western extension appeal, I do not accept these alleged survey shortcomings and policy non-compliance arguments, noting also that the alleged deficiencies with the baseline noise surveys have been addressed.
- 10.35 Uppermost in terms of the S73 appeal is the fact that a comprehensive schedule of planning conditions is already in place via the determination of the ROMP application in 2013 which RCT deemed to be adequate to regulate the ongoing development to within acceptable standards and limits. Given that there have been no material changes in circumstances since

the determination of the ROMP application, and the same or similar conditions could be imposed as part of a S73 permission, it is perverse for RCT to now suggest that an extended time period to complete the currently permitted development would be contrary to amenity protection policies.

- 10.36 RCT's position is further illogical in terms of the SSA25 'preferred area' which implicitly relies upon a continuation of operations in the existing quarry for what would be a longer period as part of an extension development. This is not the approach to 'rationale and consistent decision making' advocated by PPW11.
- 10.37 I therefore formally request that the Inspector allows the S73 appeal subject to the Section 106 Agreement and conditions which have been agreed with RCT.
- 10.38 However, as noted in Section 7.0 above, in the event that the western extension and consolidation appeal is allowed, then the S73 Appeal would fall away given that the requested time extension would be subsumed within what would be a longer time extension associated with the extension development.



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