

APPEAL REF: APP/L6940/A/20/3265358

APP/L6940/A/21/3282880

Land at Craig yr Hesg Quarry, Berw Road, Pontypridd, CF37 3BG

CLOSING SUBMISSIONS

ON BEHALF OF THE APPELLANT

Initials:

PH Mr Phil Williams
KH Katrina Hawkins
RC Rachel Canham
JH Jeremy Hurlstone
OJ Owen Jones
GJ Graham Jenkins
AB Dr Andrew Buroni
RF Dr Robert Farnfield

[1] INTRODUCTION

1. Craig-yr-Hesg (“CYH”) is a long-established quarry¹. It produces aggregate from the Pennant Sandstone which is the source of the highest quality skid resistant material in the UK². It is operated subject to modern conditions pursuant to a ROMP determination in 2013³.

¹ Appellant’s Statement of Case. 1.2: commenced operation as long ago as 1890

² Appellant’s Statement of Case, 1.3.

³ See SoCG CD 10.16 - appended

2. The western extension of the quarry is actively supported by the Local Development Plan for Rhondda Cynon Taff (2011) which relies upon it as its sole means of delivering a supply of aggregate. An application was, accordingly, made for planning permission for a western extension to the existing quarry⁴ (“the Western extension appeal”, or “Appeal A”). That was refused.
3. Next, an application was made for the continued operation of the quarry, without complying with the cessation condition on the ROMP – in effect, an extension of time application (“the s.73 appeal”, or “Appeal B”). That was refused. In other words, the planning authority refused permission to extend the time, for 6 years, to work the mineral which is consented under the existing planning permission. Failure to allow this appeal has the effect of works ceasing at the quarry on 31 December 2023 (with the winning and working of minerals to cease on 31st December 2022, and removal of any residual stock and restoration works to be completed by 31st December 2023). That would result in a cessation of quarrying activity at CYH. That is RCT’s stated intention. It opposes any operation of the quarry beyond the end of the year, as a matter of principle⁵.
4. At the opening of the Inquiry, the Main Issues were identified. In respect of Appeal A, the Main Issue was whether the proposal accords with the development plan and whether permission should be granted when taking account of all other material considerations.

⁴ to include the phased extraction of an additional 10 million tonnes of Pennant Sandstone, construction of screening bunds, associated works and operations, and consolidation of all previous mineral planning permissions at CYH, including the extension of the end date for quarrying and the overall restoration scheme

⁵ Opening statement

5. The issues in respect of Appeal B are further concerned with the effects of the operation in terms of noise, blasting and dust.
6. RCT's closing submissions are structured differently. It starts with Appeal B. It submits that the working of mineral which it has consented and provided for in its LDP, should stop at the end of 2022.
7. The appeals require urgent determination for many reasons. Take Mark Hopkins' representation as one reason. He was one of several interested persons who explained the impact of closure of the quarry on himself, and on his colleagues. He lives up the road in Tonypany. He is sixty years old and has worked at CYH for 34 years. Quietly spoken, he explained that if the quarry closed in five month's time, at Christmas, he stands little prospect of obtaining further work. On his own behalf and that of the rest of the workforce, he explained their continued efforts to work in a way which was considerate towards his community.
8. For these reasons alone, the decisions are important. They are of further importance by reason of the type of mineral which is needed and its limited geographical distribution. In short, it is needed and used throughout Wales and England, but predominantly found in a discrete area of South Wales. Its high polished stone value ('psv') makes it both hardwearing and resistant to skidding when used on road and similar surfaces. As we explain, significant weight is to be given to the supply of this important mineral. There are still further issues which require clear decisions and direction:
 - a. the duty to give effect to the development plan [Section 2];
 - b. clarity in the use of objective evidence [Section 3, on environmental effects];

- c. the obligation to have regard to well-being goals, and all of them, so far as they are relevant [Section 4];
 - d. correction of the impression created by some elected members as to health effects [Section 7].
9. The issues in this case should not be novel or difficult. They should be standard, straightforward practice for planning officers, elected members and the Welsh Ministers. Indeed, RCT's professional officers do understand these basic elements of the planning system and advised members correctly on four separate occasions. If that advice had been followed, then these appeals would have been unnecessary. The advice was not followed and as a result members of RCT's Planning and Development Committee, have compelled consideration of a contrived and disingenuous case which simply ignores agreed objective evidence, ignores the consequences of the established need, abandons any sensible application of the development plan and invents an approach to well-being which is obviously wrong.
10. All of the submissions which follow are directed to Appeal A, until we reach section [6] below.

[2] THE DEVELOPMENT PLAN

11. Before we turn to the detail of the Appellant's case, and the issues which emerge from the evidence, it is helpful to expand on the Main Issue in respect of Appeal A. It is necessary to do so because of RCT's failure to give effect to its own development plan. The law requires that decisions are made in accordance with the adopted policy, unless material considerations indicate otherwise.⁶ The policy in the development plan is to

⁶ S. 38(6) of the Planning and Compulsory Purchase Act 2004.

be given statutory weight. It guides the decision-maker at application stage in an overall scheme which is plan-led.

12. The Welsh Ministers must decide this case by reference to development plan policy.

The starting point is not the question of where mineral extraction *should* take place in this County. It is not whether there is a better site elsewhere. The question before this inquiry is a simple one: does the application for the Western Extension accord with the adopted development plan? If the answer to that question is yes, then planning permission ought to be granted, unless material considerations indicate otherwise.

13. The Council's case at the end of this inquiry is that the scheme is compliant with the Development Plan⁷. Even with that concession, the Appellant will explain why the scheme complies, in any event.

The Development Plan and Relevant Minerals Policy

14. The Development Plan consists of the RCT CBC Local Development Plan (2011) ("LDP"). PPW (edn 11), Minerals Technical Advice Note 1 (Wales): Aggregates ("MTAN 1"), and the Regional Technical Statement Second Review (RTS2) are also important material planning considerations.

15. Policy SSA25 is of central importance. Of the relevant policies, it is the dominant policy in the LDP. It identifies land adjacent to CYH quarry as a 'preferred area of known mineral resources'. CYH is the only operating sandstone quarry in RCT, as the supporting text to the policy makes clear, and that the identified 'Preferred Area' is an area of known mineral resource with commercial potential where planning permission

⁷ See note of PW's XX, appended to the Appellant's Costs Application. We say more about that at §145 below.

might reasonably be anticipated and where the ‘preferred area’ provides a clear guide to where extraction is likely to be acceptable, with the approach bringing a high degree of certainty to all (PPW11 para 5.14.19).⁸

16. The LDP explains that the mineral is required to meet the apportionment of aggregate supply to RCT, but also because of the particular properties of the aggregate. PPW11 requires that the UK and regional need for such material is to be accorded significant weight (PPW11 para 5.14.23).

17. The area immediately beyond the quarry is also ‘safeguarded’ from development. In other words, this is a resource which has been protected in order that the operation of the quarry can continue. That is encapsulated in Policy AW14 where unnecessary sterilisation, or activity which might otherwise hinder extraction, is prevented⁹.

18. The Proposals Map then illustrates and defines a buffer which is indicated as ‘AW14(5)’. Whilst that includes the existing residential properties and the school, it is common ground that Policy AW14 was settled with those existing residential properties and school within the buffer zone.¹⁰

19. MTAN 1:

“will usually be material to decision on individual planning applications and mineral review applications and will be taken into account by the Welsh Assembly Government and Planning Inspectors in the determination of called-in planning applications and appeals”.

And

⁸ SoCG for the Western Extension, 9.1.

⁹ “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”.

¹⁰ SoCG for the Western Extension, 9.4.

“It is essential to the economic and social well being of the country that the construction industry is provided with an adequate supply of the materials it needs but not to the unacceptable detriment of the environment or amenity.”¹¹

20. Moreover, and at §7:

“The overarching objective in planning for aggregates provision therefore is to ensure supply is managed in a sustainable way so that the best balance between environmental, economic and social considerations is struck, while making sure that the environmental and amenity impacts of any necessary extraction are kept to a level that avoids causing demonstrable harm to interests of acknowledged importance. (...)”

21. 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 in MTAN 1. The relevant parts of the RTS should then be incorporated into the LDP.¹²

22. Whilst the LDP defines the area for expansion (SSA 25), the technical parameters within which this appeal must be determined are contained in MTAN 1. It sets out the technical standards, against which all of the experts in this appeal have undertaken their assessments. It gives important guidance relating to, *inter alia*: buffer zones; dust; impact of blasting operations (ground vibration, air overpressure and fly-rock), and; noise. The Welsh Ministers should follow their own policy in MTAN 1 and follow the criteria for objectively assessing whether the standards and limits they have set out can be adhered to.

23. CS10 of the LDP deals with mineral planning in RCT, generally. It contains the local expression of need. Mineral planning authorities are to:

¹¹ MTAN 1 §6.

¹² GJ PoE, §31.7.

“protect resources and to contribute to the local, regional and national demand for a continuous supply of minerals, without compromising environmental and social issues”.

24. The thrust of that policy is to meet the need, by maintaining a **minimum** 10-year landbank of permitted crushed-rock aggregate reserves throughout the plan period (to 2021) together with an extended landbank¹³ in the form of a Preferred Area of Known Mineral Resource.

25. It is a matter of common ground that:

- a. notwithstanding the time expired date of the plan, the LDP policies continue to be relevant and are the development plan;
- b. beyond the end of the plan-period, there must be a minimum 10 year-land bank in RCT;
- c. RTS2 sets a minimum requirement for the provision of 19.125M tonnes for the forthcoming LDP plan period and the provision of a minimum 10 year landbank at the end of that plan period as RCTs contribution towards sub-regional supplies.

Compliance with the development plan

26. The plan-led system provides a clear guide for where development should take place.¹⁴

RCT drew attention to fact that SSA 25 is ‘identified’ as a Preferred Area rather than ‘allocated’ as a Preferred Area Whether it is identified or allocated, this does not take

¹³ The landbank is defined as the stock of planning permissions for the winning and working of minerals: it is composed of the sum of all permitted reserves at active and inactive sites at any given point in time and for any given area.

¹⁴ GJ, EIC.

the Council's case anywhere because the policy is saying, in simple terms – *'this is where the minerals development will take place'*.

27. Development plans are designed to provide certainty in decision making, that a particular development will be permitted at a particular location. That, as GJ rightly highlights, is the way that SSA 25 should be read – it delineates where mineral extraction should come forward. SSA 25 is also important because it seeks to deliver steady and adequate supplies (PPW11 para 5.14.1).¹⁵
28. If the quarry closes, how does RCT suggest that the gap is filled? The LDP review was RCT's answer. That is untenable for four reasons.
29. **First**, the Welsh Ministers have directed that the LDP is retained notwithstanding the plan 'end-date' – in other words, the 'preferred area' remains in place.
30. **Secondly**, the Review Report¹⁶ refers to SSA 25, notes that this application for a western extension would significantly improve RCT's landbank and proposes no other site. RCT has been asked to provide information on its call for sites. It has refused to supply such information. In those circumstances, the Welsh Ministers should draw the only available inference: there is no other site.
31. **Thirdly**, the obligation to meet the landbank is an ongoing-one, regardless of LDP preparation. It extends over 10 years, regardless of the plan period.¹⁷ The process for preparing for the LDP Review is likely to be lengthy.

¹⁵ GJ, EIC.

¹⁶ CD 7.4 at p 43

¹⁷ Evidence of GJ

32. **Fourthly**, RCT does not rely on alternatives in any event¹⁸.

Landbank and alternatives

33. All of the evidence on need and the landbank is agreed. RCT do not grapple with the consequences of that agreement. Rather, RCT would bury its head in the sand (stone), if it had any sand (stone) in which to do so.

34. **First**, turning away CYH as unsuitable in principle does not mean that RCT can fail to bring forward minerals planning proposals. It has obligations as a Mineral Planning Authority, and it has a 19.125M tonne minimum requirement arising from RTS2 which it should cater for. Even allowing the appeals would mean that the RTS2 requirement would not be met in RCT. That is how serious and contrarian RCT's position is. The appeal scheme would make a substantial contribution towards meeting that need.

35. **Second**, the aggregate at CYH is a 'special case'. It is special because policy expressly agrees that it is appropriate to transport it over long distances. The underlying reason for that is that the mineral is important, for important applications and is geographically limited in its occurrence. The characteristics of the high specification aggregate, and the exacting specifications and skid resistance properties make it so.¹⁹ It is of an 'essential nature' to the construction industry. There are only a very small number of quarries which are able to produce aggregate of the highest specification (psv +68 – 70); and this is the 'gold standard' of high specification crushed rock aggregate.²⁰

¹⁸ PW conceded in XX

¹⁹ GJ, EIC; as set out in MTAN 1 §42

²⁰ GJ, EIC.

Alternatives are few, including one quarry in Cumbria. That is acknowledged by RCT and is an agreed position.²¹ There is also a quantitative need locally and nationally.

36. To the extent that Forest Wood can be relied upon as a contributing site, deliverability was agreed to be an important factor.²² As GJ explained, Forest Wood is an ex-Hanson operated quarry. It was disposed of to another operator. It has now flooded to a depth of approximately 50-60m in the mineral void. There is no provision for de-watering that void. There is no abstraction or discharge licence in place. There is no plan to convey the water off-site. GJ confirmed, that to the best of his knowledge, there were very limited reserves at the quarry.²³

37. RCT will still be under an obligation to meet the identified need arising from RTS2. But where? There is no alternative existing quarry within RCT. There is no other site proposed to replace CYH. So, there is no alternative in either planning or practical terms.²⁴ Moreover, the upshot of failing to allow the appeals at CYH is to sterilise a resource which has been confirmed, after LDP examination, to be suitable and the sole means by which the local plan, and RCT, can meet its needs and those which it agrees should be met regionally and nationally.

38. The LDP identifies no other way of meeting the policy requirement for the release of reserves of crushed rock to provide for a policy compliant landbank. RCT should not abrogate responsibility for their landbank. But that is what RCT has done. Abrogating

²¹ SOCG and PW who did not contest that in XX.

²² Agreed with PW in XX.

²³ GJ, EIC

²⁴ These were explained in detail by GJ in response to the Inspector's questions. The reasons why Gelligaer Quarry in Merthyr was constrained by access routing, Bryn quarry being of a moderate reserve in this Borough. The other sites Gilfach, Cwm Nant Lleucu, Tan y Foel and Gyl Scar would all be outside even the South Wales Area.

responsibility is the same as being irresponsible. The Welsh Ministers are bound to conclude that RCT has acted irresponsibly.

39. Reference is made to the Statement of Sub Regional Collaboration (“SSRC”)²⁵. It is important to refer to the SSRC in the context of Annex A of the RTS 2. By default, each authority will simply confirm that it accepts the apportionment and will take steps to meet the requirements. Exceptional circumstances relate to either: (1) a LPA which is unable to meet the minimum requirements, or; (2) an alternative achievable and more sustainable pattern of supply being identified in collaboration with other LPAs. Over 70% of the surface of the Borough is underlain by Pennant Sandstone and much of the rest underlain by limestone, hence it is impossible to demonstrate exceptional circumstances.

40. If, through the SSRC, RCT sought to transfer the apportionment to another Authority, it will be necessary to consider whether productive capacity can be maintained – in this case 400,000tpa of HSA. Annex A of RTS2 is not a panacea. Annex A does not provide an automatic or easy mechanism to release RCT from the requirement to provide a minimum of 19M tonnes of aggregate as its share of regional production.²⁶

41. Failure to grant planning permission would mean that, on 31st December 2022, the practical landbank would amount to 0. Nil. This was all agreed by PW²⁷. That would have a whole range of potential planning consequences, none of which would rectify

²⁵ PW, PoE, §2.39

²⁶ GJ, Re X.

²⁷ Q: *This is currently below tens of metres of water, without drainage or a drainage strategy?*

A: *I don't know the characteristics of the site, but yes, I think your description is a fair one.*

Q: *So, the landbank is 0 on the 1st Jan next year from within RCT?*

A: Yes

the landbank easily. In the absence of existing available reserves at existing quarries, the only alternative is to look at greenfield delivery. If a hypothetical new site (for which there is no evidence whatsoever) were to come forward to meet that need it would require commercial arrangements with the landowner and geological investigations to be undertaken. The promotion of an LDP Candidate Site would be likely to need to be supported by a deliverability, or financial, appraisal of the site. If the site(s) is acceptable in principle to RCT it would have to be tested at the LDP examination as either a specific site or as a preferred area, which would require environmental appraisal. If the site survives the LDP process and is identified / allocated as a specific or preferred site, then an application would need all of the studies and assessment for an environmental statement. If permission is ultimately granted, the implementation works would involve the establishment of a site access, site preparation, soil stripping of the extraction area and other preparatory works. That would be a lengthy process. It would mean an absence of supply for 15-20 years before the lost supply could be replenished.²⁸ Nobody suggests otherwise.

42. On the contrary, if the appeal is allowed, then the landbank would be around 12.5M tonnes as at December 2022. That would go some way to meeting the 19M tonne need – it would be an important component of that requirement.²⁹ Moreover, it would mean that there would be no break in production and that supplies would continue. That continuity is important. That would not be the case with bringing an alternative site on-stream at some unspecified future date.³⁰

²⁸ GJ, EIC and not challenged

²⁹ GJ, EIC.

³⁰ GJ, EIC.

43. To summarise, to the extent that the Council now seek to rely upon the linguistic differences between the identification or 'allocation' of a 'preferred area', the difference goes nowhere. The Council has no other site identified or allocated on which it seeks to rely to meet its landbank. It has no other answer to the shortfall.

44. It is then necessary to consider the environmental effects of the proposed scheme, and it is to those topics that we now turn.

[3] ENVIRONMENTAL EFFECTS

45. There is no objection to the proposal on the basis of landscape and visual impact, ecology, ground water and surface water nor the historic environment. One does not have to practice in the field of minerals planning for very long to appreciate that each of those assessments is important and that it is commonplace at other sites well founded objections on each and every one of those topic areas. Here, there are none.

46. Further, it is also essential to keep in mind that in respect of air quality, noise, dust, blasting, highways there is no objection from any statutory consultee nor any specialist officer in RCT. All conclude that the effects are acceptable, subject to appropriate conditions. Hence, these submissions on environmental effects are all made in the context of complete and full agreement from all professional consultees that each and every environmental effect of the scheme is acceptable, as RCT confirm in closing³¹.

47. That is, we submit, a startling position from which to commence submissions on environmental effects in any appeal. It is still more startling in respect of a scheme

³¹ Para 11 of RCT Closing [LPA5.3]

which has been recovered by the Welsh Ministers for their own determination. We record our contention at the outset of these submissions on effect, that the decision to recover the appeals is surprising when the context is fully and properly understood. However, having heard from elected representatives at the Inquiry, it is now plain that the evidence as to environmental effects has not been understood. Indeed, it has not been considered them, at all. That is a topic to which we shall return in Section 7, below.

48. The Council then rely upon generalised amenity policies which are of wide application, to many forms of development (namely AW5, AW10 and CS10 (6)). The terms of the policies do not really frame the issues any further than national planning policies which require minerals development to conform to well-established standards in respect of those issue that arise from every minerals development: noise and dust, and in respect of hard rock quarries, blasting.

49. The RfR make reference to a 200m separation distance. Its prominence in RCTs case has fallen away and at §87 of RCT's closing it is described as '*a narrow point*' and there are '*bigger issues in this case*'. It is plainly to be applied flexibly having regard to the circumstances and the evidence. As we demonstrate, and as is agreed, the environmental effects are acceptable. Moreover, any stand-off needs to take account of the fact that processing plant is well within 200m of residential property, and is acceptable. It would be hard to justify a prohibition on working within 200m when processing takes place within that distance.

SSA and Amenity policies

50. First, it is useful to just look at SSA 25, and the extent to which it should be read together with amenity policies. The key policies in the plan are designed to facilitate the obligation in the plan to have a minimum 10-year landbank (CS10 (1)).³² It is the only preferred area designated in the LDP. That is both notable and relevant. By contrast, AW5 is part of a suite of generalised policies – such amenity considerations would apply to **all** types of development, including residential and commercial development.³³ To illustrate the point, it contains policy considerations as general as scale and design, car parking, and site layout.³⁴

51. It is then necessary to consider how the planning system, and the minerals planning system approaches: (1) the evidence, and; (2) the mechanisms for controlling such development.

Amenity Policies And Controls

52. As was explained in the Appellant's Opening Statement, planning decisions are to be taken reasonably. To do that, it is necessary to have regard to the evidence. That means **all** of the evidence, including to the specialist disciplines which support the planning system, and the guidance which it produces to make sure that development occurs within acceptable parameters.

53. The Council now rely upon amenity policies to suggest that the development would, in some way be inappropriate (AW5, AW10 and CS10(6)). It does so without reference to technical standards, guidance, accepted methodologies, witnesses, or objective

³² GJ, EIC.

³³ GJ, XX.

³⁴ GJ, EIC.

evidence. It relies solely on the evidence of its main planning witness and the empirical subjective issues he relies upon.

54. The key relevant principle in PPW11 is to reduce the impact of mineral extraction and related operations during the period of working. This is by ensuring that the impacts on relevant environmental qualities caused by mineral extraction and transportation, for example, air quality and soundscape are within ‘acceptable limits’.³⁵ Mineral workings should not cause ‘unacceptable adverse environmental or amenity impact’.³⁶
55. 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.³⁷ Any effects on local communities and the environment must be minimised to an acceptable standard.
56. After setting the amenity policies in their development planning context, it is then necessary to consider how the planning system, and the minerals planning system approaches (1) the evidence and (2) the mechanisms for controlling such development. Both will be addressed later in these closing submissions.

The evidence before the inquiry on amenity impacts

57. Nationally adopted guidance and standards apply to all of the disciplines – for example, landscape and visual impact, ecology, ground water and surface water, air quality, noise, dust, blasting and the historic environment. The evidence for this Inquiry has

³⁵ PPW, 5.14.2

³⁶ PPW, 5.14.42

³⁷ PPW, 5.14.2.

been gathered over a long period of time – commencing either 14 or 7 years ago depending on whether you start to count from the preparation of the plan or the application. It has been consulted upon with statutory consultees and the public. Now, RCT has closed its case solely by reference to third party representations. Those representations are fully respected. But what RCT has not done is state what impact is acceptable. There is nothing in RCT's closing to guide anybody. It is a series of bare assertions that, notwithstanding objective acceptability, the effects are just not acceptable. Objection suffices to justify refusal, submits RCT.

58. Where there are effects arising from the scheme, the question that follows is whether or not the effect falls within the standard which is recognised. If it does not, there is a second question – can the effect be mitigated and/or controlled by the planning system to make it acceptable? The residual effect including mitigation then needs to be assessed to allow a conclusion to be reached as to whether there remains a significant impact on the living conditions of neighbouring occupiers, with particular reference to noise, dust, air quality, blasting and traffic.

59. As we have heard through the evidence of PW, the Council have a residual concern with 'amenity impacts'. The evidence on amenity impacts comprises (1) PW's evidence and (2) that put forward by local residents. However, the Council cannot take any objective issue with matters of air quality, noise, highways, blasting (including vibration and air overpressure) in terms of an ability to comply with objectively set 'acceptable limits and standards'. It has accepted all of that evidence and has not contested it, in any way.

60. We are left then, with the planning ‘amenity’ case run by PW. Even having regard to the specialist range of considerations which arise in minerals planning, it is clear that PW’s experience in that regard is limited.³⁸ His ability to give first-hand evidence on amenity impacts is limited by not visiting the site at all before drafting his evidence. Further, he confirmed that when he did visit the site, he did not enter the quarry.³⁹

The consequences of relying on subjective evidence.

61. The fundamental role of a planning decision maker is to have regard to the evidence. There is a comprehensive evidence base from the Appellant. The Council’s case as we understand PW’s evidence is the perceived risks, or fear, arising from amenity effects, and associated mental health issues. It is a narrow, single topic.

62. It is accepted that ‘fear’ can be a material consideration, however, the circumstances of this case are very different to the decided cases. In the *West Midland Probation Committee* case, it was evident that there was nothing that the planning system could do to control the ‘fear’: they were bailees of a bail detention centre who were escaping. By contrast, minerals planning has one of the highest degree of controls in land-use planning.⁴⁰ RCT’s closing submissions take no account of this. It is not accepted that the tests of materiality are met⁴¹. Related activities, on site, are also subject to permitting and licensing and routine inspection. It is not comparable, and the ‘fear’ should not be treated as material in this case having regard to the submissions in Section 7, below.

³⁸ One ROMP in Cardiff, PW XX.

³⁹ PW XX.

⁴⁰ OJ, Re X

⁴¹ §26 and §31 of RCT’s closing submissions

63. Respectfully, even if it is a material consideration, then weight to be attached to it should be very limited indeed.
64. In order to substantiate ‘the fear’ the tests set out by PW are that they must be (a) related to land use matters; (b) genuine and (c) justified. Whilst (a) and (b) may be made out, it is submitted that (c) is not. There was no supported or objective basis for the observations and PW is not a clinician or a public health specialist.⁴²
65. If that is a position which RCT now seek to maintain, without regard for any objective evidence, then reliance on such subjective issues in practice sets a dangerous precedent. It would mean that no regard would be needed for the objective guidance and standards **at all**.⁴³ It is also the case that there is nothing in planning policy at either a local or national level which indicates that if objective tests are met in terms of adherence to standards some other subjective test should then be applied.
66. That is not the objective of MTAN 1. PW went as far as to make a direct challenge to that guidance in suggesting that it was not correct.⁴⁴ It would move away from the amenity protection policies in PPW 11. There would be no need for development plan policies which apply objective standards for assessing amenity impacts; and we would not need specialist advisors or technical consultees as those would not be accorded weight.⁴⁵
67. The logical position that follows is that there would be no need for mineral allocations - and the need case for the reasons we have set out, would no longer be compelling.

⁴² OJ, EIC

⁴³ GJ, EIC.

⁴⁴ PW XX and GJ, EIC.

⁴⁵ GJ, EIC.

The development plan would no longer have primacy. As was put to PW in XX (with which GJ agreed), this would be a ‘recipe for chaos’.⁴⁶

Dust

68. During this appeal, several local people, as well Heledd Fychan MS, Vicki Howells MS and Cllr Doug Williams raised concerns about the impacts of dust emanating from the Site. Their experience was informed by the accounts of local people living close by. They referred to dust which settles on cars, in their gardens and houses, and also raised concern with the potential health implications arising from the same. This is ‘disamenity dust’ which is generally over 30 microns but can be in the 10-30 micron category. As PW characterised it: there is a ‘fear’ in the community about the impacts arising from dust.

69. The evidence on dust is provided in the PoE of Katrina Hawkins,⁴⁷ the appendices,⁴⁸ and an Addendum Note of Evidence.⁴⁹ That evidence is not disputed⁵⁰. Her firm has been involved with the Site since 2009, and her firm was responsible for the Air Quality Assessment undertaken as part of the EIA and Environmental Statement submitted to accompany the ROMP Review.⁵¹ She has then been actively involved since 2017, carrying out regular reviews of the PM10 monitoring and in the preparation of the Air Quality Chapters in the ES for the two applications.

⁴⁶ PW, XX.

⁴⁷ App5/2

⁴⁸ App 5/3

⁴⁹ APP5/4

⁵⁰ See SoCG on dust at CD10.17

⁵¹ PoE 1.2.3

70. She explained that, in the preparation of the two SoCGs for dust, that Mr Dawson of Wardell-Armstrong (who undertakes minerals planning work) was instructed to work on the appeal. He did not prepare a proof of evidence and was not otherwise present at the inquiry to provide a view which in any way differed with that of hers. KH explained that since her involvement in 2017 there had been no challenges from the Council to her analysis as. No officers had disagreed with her or her firm's work.
71. The only request was from Wardell Armstrong, as advisors to the Council, for further monitoring. That additional monitoring was undertaken. KH had provided the locations for the monitors to the Council. She had not been asked to re-locate the monitors or for additional data over and above that which had already been submitted.⁵² KH confirmed in XX that the monitors had been placed in the same places as in 2014, and, that there was no vegetation when they were initially placed for monitoring – they were placed on Garth Avenue and behind the Spar shop. They were sited near to houses.⁵³
72. It is common ground that, generally speaking, dust deposition has the potential to give rise to annoyance, disamenity or nuisance, through the unacceptable effects of emissions. Deposited dust is not regulated under any specific legislative requirements and there are no UK statutory standards or recommended levels in relation to dust levels. Public concerns on dust can relate to dust accumulation and soiling and these may be related to a range of factors including the nature of the Site, the locality and the baseline levels.⁵⁴

⁵² Confirmed by KH in Re X.

⁵³ KH, EIC and as seen on the accompanied site visit

⁵⁴ 2.5.1.

73. Amenity impacts are typically controlled through conditions within planning permissions, requiring the implementation of good practice dust control measures, often via a dust management plan, and via related environmental permits. Whilst there are no UK or European standards that define the point when deposited dust causes annoyance or disamenity, there are a number of “custom and practice” thresholds which are typically referred to in conjunction with other site criteria such as the frequency of occurrence. If there is to be measurement, there must be criteria. The criteria which have been used are not in fact criticised, per §17 of the RCT closing. They are based on the experience and judgements of specialists, as RCT points out. Nobody suggests other criteria or judgements. RCT is ill-placed to argue with the outcome, being without any specialist evidence of its own and having regard to the SoCG⁵⁵. A barrister’s questions are not evidence.

The dust assessment

74. The assessment was undertaken in accordance with conventional methodologies, as referenced in the ESs, and had regard to the complaints data and inspection reports prepared by RCT in relation to the Environmental Permit held in respect of the processing activities. The assessment, as presented for the Western Extension, was supplemented by a detailed Health and Wellbeing response and a subsequent Dust and Particulate Management and Monitoring Plan (“the DMMP”). The DMMP sets out the management and monitoring measures that would be implemented specifically in relation to fugitive dust. The Supplementary Environmental Statement (“SES”)

⁵⁵ CD 10.17. See in particular 4.6. *There are no UK statutory standards that define the point when deposited dust causes annoyance or disamenity. Instead, a number of “custom and practice” thresholds are typically referred to in conjunction with other criteria such as the frequency of occurrence.*

No suggestion that any of these typically referred to not appropriate or not agreed as a basis of assessment.

included a review of the additional dust and meteorological data along with additional information from the RCT site inspection reports.

75. The dust assessments concluded that the potential impacts associated with both the continuation of existing activities and the proposed extension would be *slight adverse* at most. This is predicted at those properties closest to the northern Site boundary and when activities are at, or near to, the original ground surface. As the screening bund establishes and quarrying activities move into other phases and deepen within the quarry, potential impacts fall to *negligible* at the closest properties. Potential impacts and resulting effects are predicted to be *negligible* throughout the works at the properties further away.

76. For the continuation of existing activities up to *slight adverse* impacts are predicted for those properties on Garth Avenue, located closest to the processing plant, with impacts falling to *negligible* for properties further away from the boundary. This is in the context of a comparison with a 'no quarry' scenario and with no change to the methods of working or quarrying in the existing situation. This position was agreed with relevant officers in recommending approval subject to the imposition of several conditions.

The extent of the monitoring

77. Ongoing dust monitoring on the Site boundary has continued since preparation of the Western Extension SES. It has also been supplemented by a round of off-site monitoring at Garth Avenue. The dust monitoring was designed to update the 2014

baseline and the monitoring methodology and locations were replicated as far as reasonably possible.

78. It is notable that the data obtained in 2021 was consistent with that for 2014. Dust deposition rates at Conway Close were consistently low: akin to rural background levels. In line with expectations, the latest data available for the two offsite locations demonstrates a significant reduction in deposition rates from those recorded on, or close to the boundary, at monitoring sites adjoining the main quarry haul road.

79. The assessment requires a qualitative assessment combined with empirical observations: the combined use of several tools increases the confidence in the overall conclusions. It ultimately requires a professional judgement and justification. Even whilst considering the additional information, KH concludes that the Appeal proposal may result in dust on occasion at nearby sensitive receptors, but that is not likely to be of such a magnitude that results in unacceptable levels of dust or significant adverse impacts on amenity on nearby sensitive land uses.

80. Notwithstanding, the Appellant has also undertaken 13 months of **additional** monitoring and has collated that information. Most were contained in KH's Proof of Evidence for review at this inquiry, however, the most up-to-date monitoring results were provided to Amity Planning and Wardell Armstrong⁵⁶ by way of an addendum report. The addendum report to Ms Hawkins' proof updates the round of results for the period April – May 2022 (monitoring round 14). This states that the dust deposition rates for that latest round of monitoring at the off-site monitoring locations D7 and D8

⁵⁶ In SGP Report R2613E-R02.

were all below the indicative threshold of 200 mg/m²/day referred to. In addition, it is apparent that the dust deposition rates at the off-site locations D7 and D8 were well below those reported at the site boundary at D5 and D6 (in positions adjoining the quarry haul road).

RCT's case on dust

81. How many properties are affected, is the question which RCT asks now, via PW's proof of evidence, and not previously any part of RCT's case. The answer is in KH's rebuttal proof which was agreed in full by PW. KH's rebuttal is therefore agreed evidence and so is her point that the 400m distance referred to by PW is merely a screening distance. If the effects are acceptable at much lesser distances, there is no need to assess properties further away. The submission at §18 of RCT's closing must be understood in this context, which RCT's closing submissions fail to do. They make no reference to that agreed rebuttal evidence.

Mitigation measures

82. The controls at this Site go beyond the planning system. The processing activities would be operated in accordance with the environmental permit and the wider site considerations. It is incumbent upon RCT as the regulatory authority to ensure the appropriateness of planning controls and mitigation at the site. One site visit and two site checks are undertaken per annum – if the Pollution Officer thought that changes needed to be made as part of that audit, then it would be within the gift of the Council to make such changes.

83. The management and mitigation measures associated with the Permit also use the Best Available Techniques, and the DMMP which it is proposed would be enforced for the

Western Extension development would include controls over dust management associated with the preparation of the extension area, soil stripping, bund creation, as well as measures for blasting, internal transport, material handling, stockpiling etc. There is also a scheme of planting between the primary feed-crusher and site boundary / residential properties beyond the site boundary.

84. Developments are not required to have **no** effect. They are required to prevent unacceptable effects (PPW and AW10). There is no evidence to suggest that the measures proposed would be unacceptable. If the Council thought that the measures proposed were unacceptable, there has been no engagement with what **would** be acceptable in the alternative. That could mean changes to the DMMP. The Council have proposed a condition requiring the implementation of the submitted DMMP (with no amendment) and it follows that the Council believe the development to be acceptable in terms of the means by which potential dust impacts can be controlled.

Air Quality

85. The Air Quality evidence, like the dust evidence, was prepared by KH. Air quality is not cited as a RfR, nor is it cited as part of the Council's case. It was raised by third parties, and is to some degree, advanced by PW as part of his case on the empirical harmful nature of the scheme together with 'dust' impacts.

86. The air quality assessment in the Western Extension ES primarily considered changes to the levels of PM10 concentrations due to the existing and the proposed quarry activities and whether this could influence compliance with Air Quality Objectives established in relation to human health. It concluded that there would be no significant

adverse impacts on local air quality due to PM10 emissions, subject to the retention of the existing measures taken to manage fugitive dust.

87. Following review by the statutory consultees – the Environmental Health Department, Public Health Wales (“PHW”), the Cwm Taf University Health Board (“CTUHB”), amongst others. PHW and CTUHB have confirmed that local air quality is compliant with the relevant PM10 national air quality objectives.⁵⁷ The Committee Report for 9 July 2020⁵⁸ made clear that refusal on air quality grounds was not justifiable.

88. Neither application includes an increase in throughput at the site – there would be no increase expected compared to the present. Moreover, monitoring carried within the Glyncoch estate site demonstrated that PM10 concentrations were well below the established short term and long term air quality objectives.

Other controls – disamentiy dust and air quality

89. The processing activities would continue to be operated in accordance with the requirements of the Environmental Permit which includes detailed conditions relating to the management and monitoring. Wider controls can also be imposed through the DMMP. The Section 106 agreement also includes the payment of a contribution by the Appellant to the future air quality monitoring in the local community.

⁵⁷ See SoCG, s.73 appeal, 8.23.

⁵⁸ CD4.2 – cited further at §158 below, in Section 7

90. The positions of the monitors replicates that of the 2014 monitoring programme. The latest data available for the two off-site locations demonstrate a ‘significant reduction in the deposition rates’ from those recorded on, or close to, the boundary in line with KH’s expectations.⁵⁹
91. Standing back at this point in our submissions, it is clear that there has been a proliferation of concerns surrounding the impacts of the quarry which are not well-founded. We heard from Cllr Doug Williams about the existence of an action group where health implications from the quarry have been discussed, the effect of which we consider in Section 7.

Noise

92. Noise was not listed as a RfR for the western extension although the refusal did reference §70 of MTAN 1 which does mention noise impacts. For the s.73 application, the RfR refers to the extension impacts on noise affecting the well-being of the residents of Glyncoch. The focus of the LPA’s criticisms was that the noise data in the the ES were not up-to-date. To respond to these criticisms, the Appellants prepared a PoE and appendices from an acoustics expert, Rachel Canham of WBM consultants.⁶⁰

Background noise measurements.

93. WBM consultants undertook the background noise measurements presented in the noise chapters of the ES, prepared for both the Western Extension and the s.73 applications. This was undertaken between 2013 and 2021. The commentary accompanying the noise survey results indicated that at several of the noise monitoring

⁵⁹ KH, Summary PoE, 2.10.

⁶⁰ APP 7.1 and 7.2.

locations, the operations within the quarry were not audible. Those data were self-evidently sufficient.

94. However, in March 2022 further background survey work was undertaken in response to RCT's so-called Supplementary Statement of Case. The measurements were undertaken at a time when the asphalt plant was not operating and when the quarry/processing operations had been shut down for the day. The noise measurements were taken over 1-hour baselines. Unsurprisingly, the results confirmed the conclusions of earlier work.

Setting appropriate limits

95. MTAN 1 sets appropriate site noise limits derived from background noise levels. Achieving the site noise limits specified in MTAN 1 should therefore indicate that site noise is at an acceptable level to avoid a significant effect at noise sensitive properties.

96. Recent baseline noise measurements have shown that the suggested site noise limits set out in the Western Extension ES, the SES and the s.73 ES are appropriate or more stringent than required following guidance in MTAN 1. The results of compliance monitoring since 2013 demonstrated compliance with the 2013 ROMP noise limits on each and every monitoring occasion.

The worst-case assessment

97. RC confirmed that worst-case parameters have been used, including the shortest distance between the respective dwellings and the various items of fixed and mobile plant working for 100% of the time. It is unrealistic to think that those worst-case assumptions would be consistently experienced, in practical terms. Moreover, as

working moves down through the benches, that would increase the screening attenuation of the quarry itself, reducing noise at the receptors still further. However, the acoustic calculations⁶¹ have shown compliance within the suggested noise limits even with these ‘worst case’ assumptions.

Subjectivity

98. During XX, the Council sought to suggest that sensitivity and annoyance towards the source were relevant. That, however, is a matter for a psycho-acoustics expert and whilst the feelings towards the source may be a relevant factor, the Council has raised no technical concern or otherwise criticised the acoustics data. In this regard, we refer to the liaison group, below. Moreover, MTAN 1 expressly envisages that setting of noise limits in the context of aggregates development is about finding an acceptable level.

Blasting

99. Several local people raised concerns about blasting and the impacts upon their houses, cosmetically and structurally. These concerns were addressed by Dr Robert Farnfield, in his PoE and oral evidence.

100. It is common ground that blasting operations at CYH have, and can, be controlled to comply with the limits recommended in MTAN 1 relating to ground vibration and enforced via planning conditions⁶². Whilst those levels of vibration currently being experienced cannot be said to be imperceptible, they are certainly well

⁶¹ The summary of the Site Noise Limits is at Table 6.2 in her PoE appendices.

⁶² CD 10.15 at §9.35

below those levels which could cause even cosmetic damage.⁶³ RF notes that the vibration levels have been fully in accordance with current planning conditions⁶⁴.

101. RF notes that the imposition of a stand-off condition is irrelevant. The maximum instantaneous charge weight can be controlled: not by stand-off, but by blast design and decking.

102. RF has suggested additional planning conditions which are identical for the two appeals. In respect of air overpressure, there is a ‘sensible combination of control and review’. It imposes a requirement to manage the blasting operation to minimise air overpressure levels, whilst at the same time, using a low overpressure level of 120dB as a trigger for a design review. Only in closing has RCT suggested that the 120dB trigger was down-played by RF⁶⁵. That was not put to him, nor could it be because RCT had no blasting specialist to give any instructions to its advocate.

103. Damping down of the area of the quarry where the blasted rock is expected to land, provided safe access is available, would assist and is proposed⁶⁶. The Appellant agrees to additional means of notifying blast times⁶⁷ and we say more about that in Section 5 below.

⁶³ App 9/1, section 8.

⁶⁴ As shown at figure 1 in his PoE

⁶⁵ §37 of RCT’s closing submissions

⁶⁶ This has been included within the agreed schedules of conditions (western extension condition 27 and s73 condition 22

⁶⁷ Eg by a text messaging facility (also reflected in the agreed schedules of conditions as conditions 23 and 19 respectively).

Traffic

104. Third parties raised concerns about the traffic impacts arising from the proposals. They can be summarised as a perceived increase in traffic flows and associated impacts on safety, amenity and damage along the road network.
105. The Appellant submitted highways evidence by Jeremy Hurlstone, and Appellant's case is supported by a PoE.⁶⁸ JH was also responsible for the Highway assessment in the ES in 2015⁶⁹ in the SES in 2021⁷⁰ and also for the ES of the s.73 ES.⁷¹
106. Neither of the two planning applications which are the subject of these appeals were refused planning permission on transport grounds as the Highway Authority raise no objections to the proposals, subject to the maintenance of the network. The maintenance contribution is appropriately dealt with through the existing statutory powers.
107. HGV activity associated with CYH will not increase beyond those previously accepted and recently accommodated on the road network. Whilst the proposals would prolong the activity, this would not result in a significant adverse safety impact on routes which retain sufficient capacity to accommodate the continuation of the activities. The outputs would remain the same at about 400,000T per annum.
108. Criticisms concerning the initial date of survey data go nowhere. New survey data was obtained in 2020 for the SES. The data was not arguably out-of-date.

⁶⁸ App 8/1

⁶⁹ CD1.2

⁷⁰ CD 2.9

⁷¹ CD 3.1 .

109. The issue of congestion on Berw Road was raised. JH highlights how the traffic flows on Berw Road are below the design capacity of routes on which higher levels of delays are likely to be experienced due to restricted through-movement.⁷²
110. The closure of the White Bridge was raised by Cllr Pickering in the July 2020 Committee. The impacts of the same on traffic flows were addressed in the SES.⁷³ To the extent that they were raised by Cllr Powell about causing a ‘rat run’ – the proposed diversion route was addressed by JH in his Note⁷⁴ and the bridge was seen to be closed on the accompanied site visit.
111. Some residents raised mentioned road safety because of HGVs on the roads. Cyclist and pedestrian activity is common on the local roads, which currently accommodate the CYH traffic without resulting in personal injury accidents involving HGVs and such users.⁷⁵ This is clear from the fact that there had been no personal injury accidents involving HGVs for the period between 1 April 2008 and end of 2021, a period of some 14 years.⁷⁶
112. Mr Pritchard raised the possibility of lower friction stone being acceptable as an alternative. CYH material provides a higher level of performance at the outset, and,

⁷² APP 8/1, JH PoE, 8.1

⁷³ CD 2.9, SES, bottom of page 63, 1st column, 2nd column and penultimate paragraph of 1st column on page 66.

⁷⁴ Note submitted to Inquiry, dated 25 June 2022.

⁷⁵ Note submitted to Inquiry, dated 25 June 2022. Note also the ES to the s.73 application (CD3.1) which identifies 17 personal injury accidents on the local road network. However, none involved HGV traffic, which suggests that it is not HGVs that should be the concern regarding highway safety.

⁷⁶ APP 8/1, JH PoE, 4.6 and 4.7

over time, would maintain a friction performance. This extends its useful service life. This should, over time, reduce the need to quarry for more replacement material.⁷⁷

Health

113. A health impacts PoE was prepared by Dr Andrew Buroni who considered the health, amenity and well-being impacts from the proposed applications.

114. The Welsh Index on Multiple Deprivation (“WIMD”) is the most useful and commonly applied dataset to explore and improve clarity on the distribution of deprivation in Wales. Glyncoch is in the 10% most deprived areas in Wales.⁷⁸ It is also within the 20% most deprived areas with regard to access to services and 40% most deprived for community safety.

115. By contrast, it is within the 30% **least** deprived for the physical environment – that looks at environmental quality, including NO₂, PM₁₀ and PM_{2.5} concentrations. This demonstrates a low level of environmental deprivation.

116. It is necessary to engage with these contrasting aspects of deprivation. In short, the deprivation in Glyncoch is economic, not environmental. It is necessary to address, therefore, the effect of a decision to remove a part of the local economy. When that is addressed, the answer is that poor health is highly sensitive to changes in socio-economic circumstance and that it is dismissal of the appeals which would worsen deprivation.

117. Further, we note on air quality:

⁷⁷ Note submitted to Inquiry, dated 25 June 2022.

⁷⁸ APP 10/1, § 2.2.14

- a. Even in the unreal world of considering the maximum PM10 annual mean process contribution at any receptor, and assuming all PM10 is PM2.5, and considering the highest burden of poor health in the region as a constant for all residents, the changes in emission concentration and exposure at any location remains orders of magnitudes lower than is required to quantify any adverse health outcome.
- b. It would continue to remain within the AQO thresholds set out by the Protective of the environment and health. That is consistent with the finding of the Planning Officer, Public Health and Protection Division of the Environmental Sciences group and the Cwm Taf Health Board.

118. On noise and vibration:

- a. The predicted noise levels would be below the suggested daytime noise limits at all receptors.⁷⁹
- b. Temporary operations (including the construction of the screen bund) would comply with MTAN 1 and will not exceed 67dB(A) for periods of up to 8 weeks.⁸⁰
- c. There is no significant risk of ground vibration or air overpressure to constitute any discernible health outcome. These are contained to specific operational hours to minimise noise/shock.⁸¹

⁷⁹ APP 10/1, 3.3.1

⁸⁰ APP 10/1, 3.3.1

⁸¹ APP 10/1, 3.3.2

119. On traffic:
- a. Neither of the applications would materially alter current traffic flow rates and, of the accidents recorded in the last five years, none were associated with HGVs.⁸²
 - b. There would be no material impact on the existing and future operation of the local highway road network.

[4] THE WELL-BEING OF FUTURE GENERATIONS ACT 2015

120. The Welsh Government has integrated the Well-being of Future Generations (Wales) Act 2015 (“WFGA”) into its planning policy. When the WFGA and national policy is understood in a straightforward way it is obvious that they support these appeals and are material considerations which strongly indicate that the appeals should be allowed. We now explain why.

The Well-being of Future Generations (Wales) Act 2015

121. The WFGA defines “sustainable development” as the process of improving the economic, social, environmental, and cultural well-being of Wales by taking action, in accordance with the sustainable development principle aimed at achieving the well-being goals.
122. The principle of sustainable development is the now long-established Brundtland definition of seeking to ensure that the needs of the present are met without

⁸² APP 10/1, 3.4.1. Note that additional conditions are proposed on both schedules of conditions which limit output to an average of 400,000 tpa. This is important in that Public Health Wales concluded that there would be no adverse effects on health provided there was no increase in activity. The output restriction would ensure no such increase in activity.

compromising the ability of future generations to meet their own needs. The well-being goals are those listed in table 4 of the WCFG.

123. That requires the decision maker to look across the spectrum of considerations, not just one of them, and arrive at a rational and balanced judgement of those issues in the context of the available evidence. OJ helpfully points us to passages in PPW for how that exercise ranges across social, economic and environmental issues⁸³.

The interplay between the WFGA and the Planning system

124. The WFGA does nothing to the structure of the long-established plan-led system⁸⁴. The LDP is the development plan until it is replaced at some point in the future. Had the WFGA been intended to supersede the LDP, it would have required legislation to achieve that outcome. That has not happened, nor indeed is there any hint of it in the Planning Act (Wales) 2015, nor in the three iterations of PPW since the WFGA was enacted.⁸⁵ Statutory priority is given to the development plan⁸⁶.

125. That duty under the WFGA is imported into the sphere of planning through section 2(2) of the Planning (Wales) Act 2015 (“the Planning Act”) which requires that the Welsh Ministers, in exercising their function under section 78 of the Town and Country Planning Act 1990, are to carry out sustainable development in accordance with the WFGA. This is “for the purpose of ensuring that the development and the use

⁸³ OJ PoE § 3.34 referring to § 2.28 of PPW

⁸⁴ OJ PoE § 2.2

⁸⁵ OJ, EIC.

⁸⁶ See the very well known dicta in *City of Edinburgh Council v Secretary of State* [1997] 1WLR 1447 – CD 9.4

of land contribute to the economic, social, environmental and cultural wellbeing of Wales.” Accordingly, the way that the WFGA Act is to be construed in the planning context is expressly accounted for. It is broader than merely health objectives.

The approach that the Appellant has taken

126. The WBFG Act establishes duties on a public body to have well-being objectives and then to take all reasonable steps to meet those objectives in exercising its functions. The Appellant is alone in having identified relevant all well-being objectives and considered the extent to which they bear upon the Appeals⁸⁷. There was no challenge to OJ’s analysis and conclusion that all those identified well-being objectives and the overall output of the analysis represent material considerations. Likewise, OJ’s conclusion that it was wrong to omit relevant well-being goals was, correctly, not challenged. Indeed, it was hard to detect any disagreement with OJ at all.

127. The WBFG Act has (1) seven Well Being Goals across the four tenets of sustainable development and (2) five Ways of Working which a public body should follow. OJ referred to these as the “what” and the “how”, attributing that phrase to the former Minister.⁸⁸

128. The Appellant is alone in having conducted an analysis of the proposed developments against each of the Act’s Seven Goals⁸⁹. This demonstrates how the Appeals Schemes contribute positively to that suite.

⁸⁷ OJ PoE §2.25-2.41

⁸⁸ Jane Davidson, *Lessons from a Small Country*.

⁸⁹ OJ POE Section 4

129. PW, without any equivalent analysis, accepted that there was a strong indication that consent would be highly consistent with those goals⁹⁰, namely:

- a. Mineral resource to support a productive society
- b. Avoiding the sterilisation of important resource
- c. No adverse or unacceptable landscape, ecological or hydrological effects
- d. Consistency with recognised standards of amenity
- e. The provision of a recreational route
- f. Investment in community infrastructure
- g. No harm to the Welsh language
- h. Support to the economy and particularly to construction
- i. Efficiency in extraction at an established location.

130. That was one of many important concessions by RCT and the ambitious submission at §72 of RCT's closing submissions does not fill the gap (it now says that it considered everything). It underlines the lack of thought and understanding in the RfR for Appeal B and in glib references made to the Act by some interested persons, as we submit further below.

131. In XX, OJ was taken to the public service board's wellbeing strategy⁹¹ and asked about the views expressed by the community as part of the well-being assessment. It was telling that the Inquiry's attention was taken to environmental and social well-being and an observer might have drawn the inference that there were just

⁹⁰ PW, XX, only questioning accordance with (d) – standards of amenity, and even then accepting that recognised standards of amenity were provided for

⁹¹ (Appendix 2 of his evidence)

two important subject areas in that assessment. Only through his answers was the subject of economic well-being similarly listed in that same table referred to in order to give the rounded view. OJ explained how:

- a. the Extension of Craig Yr Hesg is part of the Local Development Plan's long-term strategy to provide mineral resources of national importance;
- b. that strategy was itself founded upon collaborative work undertaken by the Regional Aggregate Working Party and enshrined in the Regional Technical Statement;
- c. the four times officers recommended that the planning applications be approved was based upon an objective analysis drawing on the inputs from a participative process with involvement from a range of organisations⁹² as intended by PPW⁹³ - Public Health Wales, the University Health Board, the Council's own internal consultees including its environmental health officer, other external consultees, and having regard to the views expressed through local engagement over a period of many years⁹⁴;
- d. consideration of health effects was addressed in 2016 and consulted upon without objection from any relevant statutory consultee⁹⁵;
- e. the recommendation that the applications be approved reflected an integrated view of the proposed developments, balancing, on the one hand the identified need for the minerals to meet society's need, alongside on the other hand, the environmental effects and concluding that the proposed developments could be undertaken within acceptable limits and without unacceptable adverse effects⁹⁶; and

⁹² OJ, EIC (referring to page 5 [CD4.2] and page 8 [CD4.5])

⁹³ PPW para 2.29

⁹⁴ GJ oral evidence to the Inquiry

⁹⁵ CD2.1

⁹⁶ Citing PPW para 5.14.2 and 5.14.23 to which Mr Williams, Mr Jenkins and Mr Jones refer

f. the use of planning conditions and other controls as being important in preventing unacceptable adverse effects that could arise absent these, an approach consistent with both the LDP and PPW.⁹⁷

132. It is no surprise that this is analogous to the key principles in PPW and MTAN 1 and in turn Policy CS10 of the LDP. There has been no challenge to this analysis and no alternative proposition advanced by the Council as to how what it decided reflects these ways of working, in apparent ignorance of the practical effect of this part of the Act.

133. In all respects, the three analyses set out by the Appellant show how, on the basis of the objective and expert evidence before the inquiry, the appeals schemes achieve Sustainable Development. This is particularly the case when it is viewed through the discipline of planning acts and the lens of Welsh Government's land use planning policy, which carries substantial weight in the planning process.⁹⁸

The approach taken by RCT

134. The Council's SoC does not satisfactorily substantiate its case that the proposed works could be undertaken without giving rise to adverse impacts or that suitable controls would fail to mitigate the amenity impacts.

⁹⁷ Ibid

⁹⁸ OJ EIC (Future Wales: The National Plan, page 17)

135. OJ refers to the Committee Transcripts and Minutes of the meetings. Though unacceptable harm to health in the event of planning permission being granted was noted – meaning that quarrying should cease – that analysis lacks consideration of the LDP and the balancing of social, economic, cultural and environmental issues. As OJ highlights, to allege that the proposed development conflicts with one Goal, without a balanced consideration of its contribution in other respects is **not** the correct application of the framework. In light of the evidence put forward by one OJ, to predicate the analysis on one goal alone, is an express misapplication of the WFGA and s.2(2) of the Planning Act 2015. It drives a coach and horses through the balancing objectives of the Act.

136. PW accepted that there is no harm to physical health, but he advanced the proposition that harm is caused to mental health. RCT has not called any evidence to substantiate this. It has not referred to any objection from any statutory consultee in this regard. In short, it has no substantive evidence in support of the bare assertion. It is simply his opinion as a planner, drawn from letters of representation and a list of complaints. OJ fairly pointed out that PW is not a clinician and is not qualified to make this judgement⁹⁹.

137. PW's analysis had no regard to the other wellbeing goals, which he then agreed were relevant.¹⁰⁰ To leave those goals out of account is a fundamental misapplication

⁹⁹ OJ, EIC, XX, answers to the Inspector and Re-X.

¹⁰⁰ PW, XX

of the Act. Similarly, to ‘cherry pick’ one goal without regard for others is to undermine the purpose of the Act.

138. In conclusion, it is imperative that the Welsh Ministers have regard to the WFGA and apply it properly within the meaning of s.2(2) of the Planning (Wales) Act, as OJ has done. The WFGA does not undermine the LDP. The goals must all be taken into account. It is submitted that there is active support from the WFGA. When the exercise is properly, fully and fairly undertaken it produces a material consideration which weighs strongly in favour of the proposals.

[5] OTHER MATTERS

139. In this section we make short references to:

- a. The role of the environmental permit
- b. Conditions
- c. The s106 agreement
- d. Restoration guarantee.

140. The crushing of sandstone and its coating to produce asphalt are activities which are controlled by an environmental permit. As per waste activities, and as cases such as *Gateshead*¹⁰¹ indicate, planning and pollution controls should not duplicate each other. Further, the planning system works on the basis that both planning and pollution controls will be effective and will be enforced. In the minerals context that is further

¹⁰¹ *Gateshead MBC v SSfE* [1994] ELR 11

re-enforced by the fact that fees regulations enable planning authorities to recover their costs of inspections¹⁰².

141. The quarry is currently operated under the ROMP Schedule of 49 conditions¹⁰³ and similar conditions are proposed for each appeal¹⁰⁴. There is a schedule of conditions which is aimed primarily at Appeal A. There are some modest differences which have been highlighted in respect of Appeal B.

142. There is a condition which sets out noise limits. Applying the MTAN1 criteria to the most recent monitoring of background noise yields the values which the appellant submits to be appropriate. There is no question that this additional monitoring and the resultant limits comply with the EIA regulations¹⁰⁵.

143. The appellant has suggested helpful additions to the conditions which control blasting in order to reduce dust generation from this activity.

144. We have heard from some residents that they have not had adequate notice of blasting and/or have not otherwise had opportunity to engage with Hanson. On blasting, GJ stated that Hanson would be content to agree to take the current provision (sirens, notice board, website) further and agree that there would be further

¹⁰² Regulation 12 of the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015

¹⁰³ Contained at Appendix 1 to the SoCG, s.73 appeal.

¹⁰⁴ See Appendix 2 of the SoCG, s.73 appeal. The parties have worked on these further and submitted those during the Inquiry.

¹⁰⁵ The additional information was provided during the course of the appeal. There is no requirement to advertise – see Regulation 24(2) Town and Country Planning (Environmental Impact Assessment)(Wales) Regulations 2017

communication (for example, by text message). Moreover, in terms of wider public engagement, GJ explained that there formerly had been a liaison group and they would be content to resurrect it. It had been closed because in the past, it had been poorly attended where there had not been much to discuss. GJ agreed that this would be a good mechanism for people to discuss their concerns and foster a better relationship with the community.¹⁰⁶

145. There is a s106 agreement in respect of each of Appeals A and B. They provide for monitoring of air quality. They also consolidate the permissions. Each is very straightforward.

146. In response to your question about securing restoration, in the event that the quarry operator is insolvent, that has been addressed via the MPA's scheme to guarantee restoration costs.

[6] APPEAL B

147. PW was asked in cross-examination, whether, on the day that the LDP was adopted, the operation of the quarry accorded with the development plan. He agreed, without qualification, that it did. When that reality dawned on him, he realised that his position was impossible. He was driven to argue that the presumption in favour of the development plan was outweighed by unevidenced mental health concerns, proximity within 200m of other uses, and amenity effects which were all accepted by reference to accepted policy and guidance. He was forced to argue that the presumption in favour

¹⁰⁶ GJ, EIC.

of the development plan, the need, the failure to maintain the landbank and the special qualities and functions of the mineral were outweighed by these matters.

148. He then realised that he was in no better position in respect of the extension application. The Council's case had entirely collapsed.

149. He should not have been re-examined on his clear and repeated, concessions. Indeed he was not re-examined on the question of whether there was compliance with the development plan on the day that the plan was adopted. The way in which he was re-examined was to take him to his proof of evidence where he stated that the proposals did not comply with the development plan. He then gave an answer in accordance with his proof. By that stage RCT had neither a case nor any credibility.

150. In its closing submissions, RCT says little about compliance with the development plan so far as Appeal B is concerned. At §77/78 we simply have '*...national policy does not provide a justification for a decision contrary to the development plan.*' With respect, rather more analysis is required than you have been provided with, and the submissions needed to engage with the concession which we record at out §147 above.

151. Appeal B should be allowed for the same reasons as Appeal A.

[7] DISCUSSION AND CONCLUSION

152. From what we have said so far, it is difficult for the objective bystander to grasp why an appeal has been necessary. What were the members of RCT ever thinking about? It is, however, explicable and the explanation is unfortunate.

153. You will have observed that no interested person has made any reference to the evidence. Nobody has referred to the environmental statements. Nobody has referred to the statements of evidence of the expert witnesses who addressed, in order: dust, air quality, noise, blasting, WFGA, need, policy and the planning balance. Similarly, no reference has been made to the content of evidence dealing with traffic and health and well-being issues. Not only did nobody refer to these materials, very few listened to what these witnesses had to say.

154. An answer to that might be that people have livings to earn, families to care for and more interesting things to do. They would be good answers, of course. But they do not explain why:

- a. When making their oral representations to you or writing to RCT or to the Council that people have not said something like ‘I have read [the non-technical summary of the ES], but’ Nobody said that or anything like it.
- b. Reference was not made to the reports of officers to Committee. There are four of them. They are not long documents, and each is readily understood in about 10 minutes of reading. Elected members came to the Inquiry to make many assertions and to draw attention to objections. None of them engaged with the evidence which was summarised in the officers’ reports. It is an elected

member's function to read advice which is provided to RCT, to understand it, to relay it to interested persons and if they disagree with it, then to give cogent reasons for that disagreement.

- c. Two Members of the Senedd attended to make representations. The points at (b) above are repeated.

155. The above should not be misunderstood. All input to the Inquiry process is respected, as is the time spent in making the representations. However, a key function of the Inquiry to test whether a representation is an assertion which is properly supported, or not. The objective evidence has been available to be tested for many years and emerges wholly agreed. We turn to what was said in representations.

156. Councillor D Williams explained to you the risks associated with PM2.5. He had seen dust accumulate on solar panels and drew a link between PM2.5 particulates and disamenity dust. He had looked up some WHO data. He talked about cancer. He talked about the effects on mental and physical health as being horrendous. He drew our attention to the WFGA. He explained that he was a leading figure in a Hanson Action Group for Glyncoch. It had over 500 members.

157. Heledd Fychan MS explained that the science was not up to date. The quarry affected air quality and health. The material was not needed for roads anymore.

158. Councillor Dawn Wood is a newly elected Councillor for both the town and for RCT. She had worked with Heledd Fychan MS. She particularly emphasised people's respiratory health. It was affecting people's mental health.

159. Vikki Howles MS referred to health data for the area and the fact that Glyncoch is a deprived Ward in that regard. She emphasised the WFGA and also a clean air bill.

160. The problem with all of this material is that it fails to engage with the facts, is entirely blind to the evidence and promotes a narrative which is demonstrably false as shown by:

- a. The ES for Appeal A¹⁰⁷ at Chapter 12 (Air Quality), at p205 onwards
- b. The PM10 emissions plan¹⁰⁸
- c. The ES for Appeal A, appendix 4.5 in respect of the AQMA¹⁰⁹
- d. The Supplementary ES (Vol 5)¹¹⁰ at p 59 which states¹¹¹ “The on-going PM10 monitoring has confirmed that there are no actual or likely breaches of either the long-term annual mean or short-term 24 AQOs for PM10 at Garth Avenue...the proposed extension is deemed acceptable in terms of human health, as air quality objectives outside the site will continue to be met.”
- e. The ES for Appeal B which concludes that “The data indicates no actual or likely breach of either the long-term annual mean or short-term 24-hour AQOs for PM10.”¹¹²
- f. The Committee Report for 6 February 2020¹¹³
- g. The Committee Report for 9 July 2020¹¹⁴ - see, for example, p8:

¹⁰⁷ CD 1.1

¹⁰⁸ CD 1.3 at 12.1

¹⁰⁹ CD 2.10

¹¹⁰ CD 2.9

¹¹¹ P59, section 4.8 (Conclusions)

¹¹² CD3.1, Chapter 11(Air Quality), p145

¹¹³ CD 4.1

¹¹⁴ CD4.2

“Air quality is recognised by Public Health Wales as being ‘good’; air quality is slightly above 50% of the mean National Air Quality Objective thresholds; Members concerns in relation to the site potentially increasing output, and increasing impact, can be addressed by the imposition of a condition. Therefore, it is not considered that a reason for refusal on the grounds of impact on health and air quality can be justified.”

- h. The Committee Report for 23 July 2020¹¹⁵
- i. The Committee Report for 7 October 2021¹¹⁶
- j. The Committee Report for 10 February 2022¹¹⁷
- k. Dust and Particulate Management Plan and Dust Monitoring Plan (one for each development)
- l. The unchallenged proof of evidence on Air Quality of Katrina Hawkins¹¹⁸

161. An unsuspecting member of the public, wandering into the Inquiry to hear all of the elected representatives, without any other knowledge of the scheme, would be concerned by what was said. A resident of Glyncoch would, of course, be very worried. They would assume that their elected representatives had been informed accurately and had informed themselves fully before forming a view. As we have submitted, not a scintilla of the objective evidence has been referred to. There is no evidence that any of it has been read. The objections have been fuelled by assertions which are not supported by the evidence and which are flatly contradicted by the evidence. There has been a complete failure by those who are prominent in their opposition to relay material

¹¹⁵ CD 4.3

¹¹⁶ CD4.4

¹¹⁷ CD 47

¹¹⁸ APP 6/1

to the public which would have reduced concerns. It now falls to the Welsh Ministers to put that right¹¹⁹.

162. The ‘perception’ or ‘fear’ case is, therefore, the result of a feedback loop which has been substantially generated by some members of the same elected body which rejected professional advice it had received four times. Somewhat late in the day, it is now agreed that there is no risk to physical health. The assertion of mental health effects has not only been unsubstantiated, there has been no effort to substantiate it with evidence. RCT’s fourth and final case, namely what was left after PW gave evidence, is without any foundation. There is no material consideration here based on fear.

163. There is:

- (i) An established need
- (ii) Which is not being met to the full extent required by the landbank
- (iii) Which need would be still further under-supplied if the appeals were dismissed – in effect there would be no supply at all within RCT
- (iv) Which can be substantially met if the appeals are allowed, as has long been planned by the RAWP for South Wales and by RCT in the LDP (2011)
- (v) And which it has been shown, beyond argument and without challenge, can be met well within environmental limits as prescribed by the long-standing policies of the Welsh Government.

¹¹⁹ These appeals have been recovered. We do not know why, save that the appeals are said to be major proposals for the winning and working of minerals.

164. Permission should have been granted years ago. To do so promptly, pursuant to these appeals will keep Mr Hopkins¹²⁰ in work, as it will many more people, with all of the benefits to well-being that brings. When the site is worked-out as planned, it will provide demonstrable ecological benefits and access to the countryside with all of the benefits that brings. In the interim, the wider public will benefit from highways which are surfaced with the best material available in terms of its safety characteristics and durability with all of the benefits that brings.

165. Lastly, there is an opportunity for the Welsh Ministers to make it plain that development management decisions are not complex for schemes such as this. The answer is so obvious when one actually reads the plan, reads the evidence, understands the holistic nature of well-being and applies common sense rather than strain for an irrational and arbitrary outcome.

166. For these reasons we ask you to recommend that Appeal A be allowed and that Appeal B be allowed also.

RICHARD KIMBLIN QC

SIONED DAVIES

28th June 2022

¹²⁰ See §6 above