Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003

Town and Country Planning (Development Management Procedure) (Wales) Order 2012, as amended

Town and Country Planning Act 1990: Section 78 Appeals

Western Extension to Craig yr Hesg Quarry

Appeal ref: APP/L6940/A/20/3265358

Hanson UK

RESPONSE TO STATEMENT OF CASE OF RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

1.0 INTRODUCTION

1.1 The Statement of Case (SoC) dated 26th January issued by Rhondda Cynon Taff County Borough Council as Local Planning Authority (LPA), comprises a combined SoC dealing with both an appeal against the refusal of permission for a western extension to Craig yr Hesg Quarry, and a Section 73 application to extend the time period for the completion of quarrying and related operations at the existing Craig yr Hesg Quarry.

1.2 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. This Response is in respect of Appeal A.

1.3 It is noted that in view of the decision to refuse both applications against the advice of the Planning Officer, the LPA has sought external advice from a planning consultancy in relation to the reasons for refusal.

1.4 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 the LPA to change its reasons for refusal.

1.5 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 (revised) case to be presented at inquiry and to confirm what was in their mind at the time of determining the applications.

1.6 Following endorsement by the Planning & Development Committee of the revised case, the outcome is presented in a document which is called a Supplementary SOC (SSoC), dated 16th February 2022.

1.7 The contrasting positions are these.

1.8 The reason for refusal was:

> 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.

1.9 The Planning Authority now seeks to contend that:

1.9.1 There is insufficient evidence that the continuation of existing site operations, in addition to the proposed quarry extension, could be undertaken without adverse effects on the amenity in the immediate proximity of the site in respect of noise and dust (para 3.49 of the SoC)

1.9.2 There is insufficient noise evidence, particularly as to background monitoring (para 3.50 of the SoC)

1.9.3 There is insufficient dust evidence (para 3.51 of the SoC)

1.9.4 The adverse impacts are contrary to policies CS10, AW5, AW10 of the LDP.

2.0 LEGAL FRAMEWORK

2.1 The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 requires that a written notice of decision or determination relating to a planning application be given in accordance with Article 24:

> **24.**—(1) When the local planning authority give notice of a decision or determination on an application for planning permission or for approval of reserved matters and a permission or approval is either granted subject to conditions or the application is refused, the notice must—
> (a) state clearly and precisely the full reasons for the refusal or for any condition imposed specifying all policies and proposals in the development plan which are relevant to the decision; and
> (b) where the Welsh Ministers have given a direction restricting the grant of permission for the development for which application is made or where the Welsh Ministers or a United Kingdom Government Department have expressed the view that the permission should not be granted (either wholly or in part) or should be granted subject to conditions, give details of the direction or of the view expressed; and
> (c) be accompanied by a notification in the terms (or substantially in the terms) set out in Schedule 5.

2.2 The 2012 Order contains no provision which provides for amendment of a decision notice.

2.3 The 2012 Order provides for appeal to be made in accordance with Article 26 which provides, so far as material, as follows:

> **26.**—(1) An applicant who wishes to appeal to the Welsh Ministers under section 78 of the 1990 Act (right to appeal against planning decisions and failure to take such decisions) must give notice of appeal to the Welsh Ministers by—
> (a)serving on the Welsh Ministers ... a form obtained from the Welsh Ministers, together with such of the documents specified in paragraph (3) as are relevant to the appeal; and
> (b)serving on the local planning authority a copy of the form mentioned in paragraph (a), as soon as reasonably practicable, together with a copy of any relevant documents mentioned in paragraph (3)(a)(ii) or (3)(b)(v) and a copy of the full statement of case.
> (2) For the purposes of section 78(3) of the 1990 Act the prescribed time within which an appeal must be made under section 78(1) of that Act is .—
> (a)in the case of a householder appeal or a minor commercial appeal, twelve weeks from the date of the notice of the decision or determination giving rise to the appeal;
> (b)in the case of any other appeal under section 78(1), six months from—
> (i)the date of the notice of the decision or determination giving rise to the appeal; or
> (ii)in a case in which the local planning authority have served a notice on the applicant in accordance with article 3(2) that they require further information and the applicant has not provided the information, the date of service of that notice;
> or such longer period as the Welsh Ministers may at any time allow.
> (3) The documents mentioned in paragraph (1) are—
> (a)in the case of a householder appeal or a minor commercial appeal—
> (i)a copy of the application which was sent to the local planning authority which has occasioned the appeal;

(ii)any other plans, documents or drawings relating to the application which were not sent to the local planning authority, except any plans, documents or drawings relating to amendments to the application proposed after the local planning authority have made their determination; and
(iii)the notice of the decision or determination;
(b)in the case of any other appeal made under section 78—
(i)the application made to the local planning authority which has occasioned the appeal;
(ii)all plans, drawings and documents sent to the authority in connection with the application;
(iii)all correspondence with the authority relating to the application;
(iv)any certificate provided to the authority under article 11;
(v)any other plans, documents or drawings relating to the application which were not sent to the authority;
(vi)the notice of the decision or determination, if any;
(vii)if the appeal relates to an application for approval of certain matters in accordance with a condition on a planning permission, the application for that permission, the plans submitted with that application and the planning permission granted.

2.4 Article 2 of the 2012 Order includes this definition:

"full statement of case" ("*datganiad achos llawn*") means and is comprised of —
(a) a statement in writing containing full particulars of the case—
(i) the applicant proposes to put forward in relation to the application referred to the Welsh Ministers pursuant to a direction under section 77 of the 1990 Act; or
(ii) the appellant proposes to put forward in relation to the appeal under section 78 of the 1990 Act; and
(b) copies of any supporting documents the applicant or the appellant proposes to refer to or put forward in evidence;

2.5 Appeal A proceeds under The Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003. Under the 2003 Rules, a statement of case is defined in Rule 2 as:
"statement of case" means, and is comprised of, a written statement which contains full particulars of the case which a person proposes to put forward at an inquiry and a list of any documents which that person intends to refer to or put in evidence

2.6 A local authority is to provide a statement of case: Rule 6.

2.7 Rule 15 deals with the procedure at inquiry. By Rule 15(10) the inspector may allow any person to alter or add to a statement of case submitted by that person and received by the National Assembly or by the inspector under rule 6 so far as may be necessary for the purposes of the inquiry; but must (if necessary by adjourning the inquiry) give every other person entitled to, and who does, take part in the inquiry an adequate opportunity of considering any fresh matter or document. By Rule 15(12) the inspector may take in to account any written representation or evidence or any other document received by the inspector from any person before an inquiry opens or during the inquiry provided that the inspector discloses it at the inquiry.

3.0 CONSEQUENCES FOR THE SUPPLEMENTARY STATEMENT OF CASE

3.1 The following questions fall to be addressed:

(i) Can the Planning Authority change its decision and its reasons for refusal?
(ii) Can the Planning Authority amend its Statement of Case?
(iii) If the answer to either or both of the preceding questions is yes, should the Planning Authority be permitted to do so?

3.2 The Planning Authority may not change its decision on the application. The scheme of the legislation is to require the Planning Authority to give its decision and to give its full reasons: see Article 24 of the 2012 Order. There is no provision within the 2012 Order for there to be amendment of the Decision Notice once an appeal has been made. The 2012 Order emphasises that the Planning Authority is to state clearly and precisely its full reasons for the refusal. That is what the Planning Authority did.

3.3 The Planning Authority is no longer seized of the application. The Planning Authority has completed its work in respect of the application and it no longer has any interaction with the application because it has completed its statutory functions. The matter is now in the hands of the Welsh Ministers, delegated to an Inspector.

3.4 Therefore, the answer to the first question is very clearly no.

3.5 The Planning Authority evidently remains a participant in the appeal process, and may, for example, decide not to pursue a particular reason for refusal. It may decide not to resist the appeal at all. The Rules provide for a Statement of Case. The Rules further provide for the Planning Authority to amend its Statement of Case. It is therefore clear that under the 2003 Rules, the Planning Authority is entitled to amend its case.

3.6 However, this entitlement needs to be clearly and precisely understood. What this means is that the Planning Authority may amend its case within the scope of its stated reasons for refusal which are the foundation of its case. It does not mean that a Planning Authority may adopt a new reason for refusal which was not within the scope of the clearly and precisely stated full reasons for refusal which it gave on its Decision Notice. To do that would be to go back to the decision-making process.

3.7 Further, it is important to recognise the essential difference between a statement of a case and the evidence in support of it. A statement of a case explains the ground upon which the Planning Authority says that the application should be refused. A Planning Authority will then, necessarily, have to expand upon that reason for refusal, or ground, by explaining and developing the point by reference to the evidence which will be called in support of that case. That is why a statement of case is defined so to require a party to state which documents it will rely upon in order to support its case: e.g. we will rely on appeal decision [X].

3.8 Hence, the provisions of the 2003 Rules are to be understood by reference to the 2012 Order and a proper understanding of what a Statement of Case is. So, the answer to the second question is a qualified yes. A Planning Authority may amend its Statement of Case, but only within the scope of the reasons for refusal which it stated on its Decision Notice.

3.9 The question whether or not a public body or any other participant in an inquiry may, pursuant to the Rules, take any particular step or provide any particular document, is

a different question to whether or not that participant in the inquiry should be permitted to do so. The first question is "*Can*" and the second question is "*should*".

3.10 In the context of the chronology of this application and in the context of the chronology of the appeal, it is unfair and prejudicial to permit the Planning Authority to raise new reasons for refusal. It is unfair because:

(i) The Appellant is obliged to make its decision and to state its case on the appeal having regard to the contents of the Decision Notice, which contain the clearly and precisely stated full reasons for the refusal. That is the basis on which the appeal is brought.

(ii) In this case, the Officers recommended approval. Members gave their own opinion after consideration of the Officer's Report and the other representations which they received, both in writing and orally. It was open to members to defer their decision for an independent report from another expert, including a planning consultant. Members did not do so. What has happened now is that members have been given some different reasons to refuse planning permission by a planning consultant who is instructed to defend the members' position. Those reasons are not the true reasons for the refusal of planning permission. Rather, they are a position promoted by a planning consultant whose task, in the face of an appeal, is to justify the members' decision. That planning consultant has made clear that the members' decision is not defensible.

(iii) The Planning Authority is not supplementing its statement of case, as it intimates. It is changing its reasons for refusal. It is not adding further justification for a position which it has already articulated. It is not stating that it has new or different evidence in support of the proposition which it has already stated. Rather, it is making new and different reasons to refuse the application when it has had years in which to raise those issues, and did not.

3.11 For these reasons, the Planning Authority should not be permitted to amend its case beyond the scope of the clearly stated and precise full reason for refusal.

4.0 RESPONSE TO THE LPA SOC

Revised Case v Reasons for Refusal

4.1 Notwithstanding the specific 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:

(i) An allegation that the baseline noise data which supports the noise assessments undertaken for the two applications is inadequate and not up to date.
(ii) A similar allegation that up-to-date dust monitoring data is not available; and
(iii) The contention that the developments are not in accordance with the RCT local development plan policies CS10, AW5 and AW10.

4.2 Aside from the fact that none of these issues are referred to in the two reasons for refusal, the Appellants note that:

(i) No criticisms were made by the LPA of the approach to the noise studies undertaken and reported in the western extension Environmental Statement (ES) (May 2015), the western extension Supplementary ES (SES) (February 2021), or in the Section 73 ES (May 2021). The review of the completeness of the ESs undertaken by the Planning Inspectorate (August 2021 (SES, Appeal A) and December 2021 (S73 ES, Appeal B) 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).

Without prejudice to the foregoing, the costs position, and notwithstanding the Appellant's (and Planning Inspectorate) view of the adequacy of the existing noise data, the matter will now have to be addressed by agreeing a programme of reasonable additional baseline noise monitoring, where considered necessary, and related analysis. This will be pursued in discussion with the LPA and their consultants and will be addressed in evidence.

(ii) Similarly, no criticisms have been made by the LPA (or in the Planning Inspectorate ES completeness reports referenced above) regarding the approach to the dust assessment and the monitoring data relied upon. Moreover, no reference is made in the LPA SoC to the 'Dust and Particulate Management Plan' accompanying the S73 application (re S73 ES May 2021 Appendix 11.7) which includes commitments to undertaking additional monitoring. The future monitoring data referred to in that Plan has not to date been requested by the LPA. The additional monitoring data can be made available to the LPA if requested, but otherwise the issue will be addressed in evidence.

(iii) Neither of the single reasons for refusal of the two applications make any specific reference to alleged conflict with development plan policies. If, contrary to the above, the planning authority is permitted to run a new and late set of reasons for refusal, they will be addressed in evidence.

Additional Issues

4.3 It is noted that the LPA SoC makes no reference to presenting a case based upon concerns about the effects of blast vibration, air quality (as distinct from 'nuisance' dust), or health (other than an oblique reference to alleged conflict with the Well Being and Future Generations Act goal of a 'healthier Wales'). The Appellants thus assume that the LPA will not be presenting evidence on these matters and the Appellants will structure the case they will present at the inquiry accordingly.