

LPA3.1

TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78 APPEALS

BY

HANSON UK

**AGAINST THE DECISIONS OF
THE RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL**

TO REFUSE PLANNING PERMISSION FOR

- 1. Western extension to existing quarry 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 Craig Yr Hesg Quarry, including an extension of the end date for quarrying and an overall restoration scheme (APP/L6940/A/20/3265358);
and**
- 2. Continuation of quarrying and related operations without complying with conditions 1-4 inclusive and conditions 45 & 46 imposed on the Environment Act ROMP schedule of conditions issued by Rhondda Cynon Taf County Borough Council on 24th April 2013 ref:08/1380/10 (APP/L6940/A/21/3282880)**

AT

LAND AT CRAIG YR HESG QUARRY, BERW ROAD, PONTYPRIDD, CF37 3BG

**WRITTEN STATEMENT OF EVIDENCE OF: MR PHIL WILLIAMS
ON BEHALF OF: RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL as LOCAL
PLANNING AUTHORITY**

**PLANNING INSPECTORATE REFERENCES:
APP/L6940/A/20/3265358 & APP/L6940/A/21/3282880**

LOCAL AUTHORITY REFERENCES: 15/0666/10 & 21/0720/15

DATE: 23 May 2022

Appeals to be determined by Public Inquiry

APPENDICES

Appendix 1: Newport Borough Council v Secretary of State for Wales (1997)

Appendix 2: West Midlands Probation Committee v Secretary of State for the Environment (1997)

Appendix 3: Sample of objection letters

Appendix 4: Plan indicating 250m and 400m measurements from proposed Quarry Extension

Appendix 5: Plan indicating area of quarry within 200m of adjacent residential properties

PREAMBLE

I am acting on behalf of Rhondda Cynon Taf County Borough Council (the LPA) for the purposes of this appeal.

I am a Chartered Town Planner and have been a Member of the Royal Town Planning Institute (RTPI) since 1983. I was president of the RTPI in 2016.

I have over 40 years' experience in Local Government, having been Head of Planning at Cardiff County Council, and latterly Director of Planning and Place at Belfast City Council, before working in the private sector. For the purposes of this appeal I am engaged as an Associate with Amity Planning Consultants in Cardiff.

I have appeared as S.78 Planning Witness in over 30 Public Inquiries, including a range of large scale residential and commercial schemes in England and Wales, and as Council Witness within the Local Development Plan process.

The evidence which I have provided for this appeal to my knowledge is accurate and I confirm that the opinions expressed are my professional views. I confirm that I have no conflict of interest.

For convenience, I will refer to the first appeal to be submitted (APP/L6940/A/20/3265358) as Appeal A and the second appeal to be submitted (APP/L6940/A/21/3282880) as Appeal B. I note that all of the development proposed by Appeal B is subsumed within the development proposed by Appeal A, both as regards the physical extent of the sites and as regards the periods of the proposed minerals operations. As a result, I am proceeding on the basis that if Appeal A were to be allowed, Appeal B would serve no purpose.

I acknowledge that if Appeal A were to be dismissed, Appeal B would still serve a purpose and that, consequently, it is necessary for this Inquiry to consider the planning merits of both appeals. However, given the overlap between the two appeals, I consider that it is convenient to address the issues arising in a single Statement. To avoid undue repetition, I propose to address Appeal B first, followed by Appeal A, on the basis that the issues arising under Appeal B will also arise under Appeal A (but the converse is not true).

For the avoidance of doubt, I consider that both Appeal A and Appeal B should be dismissed, notwithstanding officer recommendations to the contrary.

1. **INTRODUCTION**

1.1 My evidence addresses the planning considerations relating to the LPA's case in this appeal which follows the LPA's decision to refuse two planning applications at the appeal site as follows:

(APP/L6940/A/21/3282880) – Continuation of Quarrying at the existing site (APPEAL B)

1.2 The application sought planning permission for the continuation of quarrying at the existing site to 2028 by way of the variation of conditions imposed on the extant ROMP permission (08/1380//10). The description of development was as follows:

Continuation of quarrying and related operations without complying with conditions 1-4 inclusive and conditions 45 & 46 imposed on the Environment Act ROMP schedule of conditions issued by Rhondda Cynon Taf County Borough Council on 24th April 2013 ref:08/1380/10

1.3 On 8th October 2021 the LPA refused the planning application for the following reason:

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

APP/L6940/A/20/3265358 – Western Extension (APPEAL A)

1.4 The application sought planning permission for an extension to the existing quarry into a previously unworked area together with the continuation of quarrying at the existing site until 2047. The description of development was as follows:

Western extension to existing quarry 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 Craig Yr Hesg Quarry, including an extension of the end date for quarrying and an overall restoration scheme.

1.5 On 23rd July 2020 the LPA refused the planning application for the following reason:

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

1.6 A further report (**CD4.7**) was taken to the 10th February 2022 meeting of the Council's Planning and Development Committee, asking the Committee to consider the issues raised by the appointed consultant and to clarify the matters in respect of the appellants suggested issues of inconsistency of their earlier decisions. I can confirm that I was part of the consultant team at Amity advising the Council as the appointed consultant. At that meeting the Committee resolved to agree the recommendations/approach as set out in the report, to the effect that:

- (a) Members clarified with regard to the western extension (15/0666), whilst clear encroachment on to sensitive properties was at the forefront of their thinking, Members were also mindful of the wider health and well-being issues and indeed this is reflected in the reports they based their decision on;
- (b) Members clarified that their concerns in relation to the western extension application (15/0666) were not limited to the new extension area but applied to the site overall;
- (c) Members clarified that the imposition of a condition to preclude extraction or processing within 200m of sensitive development would not address their concerns; and

- (d) Members endorsed the views of the planning consultancy as set out in the Statement of Case in respect application 15/0666 and 21/0720 as summarised in the report

- 1.7 I understand that the Appellant disputes the relevance to these appeals of this further consideration by the Committee. I acknowledge that the Committee meeting on 10th February 2022 took place after the appeals had been lodged and that at that time the Committee was no longer the determining authority. However, the Committee was still the formal representative of the local planning authority and as such, and as a party to the appeals, was entitled to express its views about the matters raised in the appeals. Ultimately, it will be a matter for the Inspector and the Welsh Ministers to determine what weight to give to the Committee's views, but I consider it is helpful to the Inquiry process for the Inspector and the Welsh Ministers to know that the position set out in the Council's Statement of Case is a position that has been endorsed by the Committee.
- 1.8 Subsequent to the local elections on 5th May 2022, all of the Council's committees are in the process of being reconstituted. At the present time there has been no meeting of the new Planning and Development Committee and its first meeting is not expected to take place until July 2022. Consequently, it has not been possible to ask the new Committee to consider this proof of evidence. However, based on my reading of the case papers, I have no reason to think that the views I have expressed on the matters raised in the appeals do not reflect the Committee's views, albeit that the planning judgments are my own.

2. LEGISLATIVE AND POLICY FRAMEWORK

Legislation

Well-being of Future Generations (Wales) Act 2015 (CD9.2)

- 2.1 The Well-being of Future Generations (Wales) Act 2015 places a duty on public bodies to “carry out sustainable development” (Part 2, Section 3(1)), to include “setting and publishing objectives (“well being objectives”) that are designed to maximise its contribution to achieving each of the well-being goals” and “taking all reasonable steps (in exercising its functions) to meet these objectives” (Part 2, Section 3(2)).
- 2.2 Sustainable development is defined as “the process of improving the 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” (Part 2, Section 2).
- 2.3 A total of seven well-being goals are identified in the Act (Part 2, Section 4, Table 1) including, of most relevance in this instance; A prosperous Wales; A healthier Wales; A more equal Wales; A Wales of cohesive communities.
- 2.4 The Goal of “A prosperous Wales” is described as “An innovative, productive and low carbon society which recognises the limits of the global environment and therefore uses resources efficiently and proportionately (including acting on climate change); and which develops a skilled and well-educated population in an economy which generates wealth and provide employment opportunities, allowing people to take advantage of the wealth generated through securing decent work” (Part 2, Section 4, Table 1).
- 2.5 The Goal of “A healthier Wales” is described as “A society in which people’s physical and mental well-being is maximised and in which choices and behaviours that benefit future health are understood” (Part 2, Section 4, Table 1).
- 2.6 The Goal of “A more equal Wales” is described as “A society that enables people to fulfil their potential no matter what their background or circumstances (including their socio-economic background and circumstances)” (Part 2, Section 4, Table 1).

- 2.7 The Goal of “A Wales of cohesive communities” is described as “Attractive, viable, safe and well-connected communities” (Part 2, Section 4, Table 1).
- 2.8 Section 5(1) of the Act identifies that a “public body doing something “in accordance with the sustainable development principle” means that the body must act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs”. Section 5(2) identifies that, in order to act in accordance with the sustainable development principle, a public body must take account of a number of considerations including, of particular relevance in this instance:
- (a) The importance of balancing short term needs with the need to safeguard the ability to meet long terms needs, especially where things done to meet short terms needs may have a detrimental long term effect;
 - (b) The need to take an integrated approach, by considering how-
 - (i) the body’s well-being objectives may impact upon each of the well-being goals;
 - (ii) the body’s well-being objectives impact upon each other or upon other public bodies’ objectives, in particular where steps taken by the body may contribute to meeting one objective but may be detrimental to meeting another;
- 2.9 In accordance with the requirements of the WFGA Rhondda Cynon Taf County Borough Council agreed its Well-being Objectives at the Council’s Cabinet meeting of 4th March 2020 as follows:
- Ensuring PEOPLE: *are independent, healthy and successful;*
 - Creating PLACES: *where people are proud to live, work and play;*
 - Enabling PROSPERITY: *creating the opportunity for people and businesses to be: innovative, entrepreneurial and fulfil their potential and prosper.*

Planning and Compulsory Purchase Act 2004 (CD9.3)

- 2.10 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that “If regard is to be had to the development plan for the purpose of any determination... the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

- 2.11 Section 38(4) of the Act states that, for the purposes of any area in Wales, the development plan is:
- (a) the National Development Framework for Wales,
 - (b) any strategic development plan for an area that includes all or part of that area, and
 - (c) the local development plan for that area.
- 2.12 It is the policies of the local development plan which are relied upon for the purposes of the LPA's case.

National Planning Policy and Guidance

Planning Policy Wales Edition 11 (CD10.18)

- 2.13 Para 1.9 of PPW confirms that "PPW should be read as a whole, as aspects of policy and their application to a particular development proposal could occur in several parts of the document."
- 2.14 Para 1.2 of PPW identifies its primary objective as ensuring "that the planning system contributes towards the delivery of sustainable development and improves the social, economic, environmental and cultural well-being of Wales, as required by the Planning (Wales) Act 2015, as well as the Well-being of Future Generations (Wales) Act 2015 and other key legislation."
- 2.15 Sustainable development is defined within PPW as follows (Introduction): "Sustainable Development" means 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.
- 2.16 Figure 4 of PPW identifies five key planning principles for achieving the right development in the right place as follows:
- Growing our economy in a sustainable manner
 - Making best use of resources
 - Facilitating accessible and healthy environments
 - Creating & sustaining communities
 - Maximising environmental protection and limiting environmental impact

- 2.17 With regard to maximising environmental protection and limiting environmental impact Fig.4 states that “Negative environmental impacts should be avoided in the wider public interest. This means acting in the long term to respect environmental limits and operating in an integrated way so that resources and/ or assets are not irreversibly damaged or depleted. The polluter pays principle applies where pollution cannot be prevented and applying the precautionary principle ensures cost effective measures to prevent environmental damage”.
- 2.18 Para 3.21 of PPW states that “Planning authorities have a role to play in the prevention of physical and mental illnesses caused, or exacerbated, by pollution, disconnection of people from social activities (which contributes to loneliness) as well as the promotion of travel patterns which facilitate active lifestyles. The planning system must consider the impacts of new development on existing communities and maximise health protection and well-being and safeguard amenity... Health impacts should be minimised in all instances, and particularly where new development could have an adverse impact on health, amenity and well-being. In such circumstances, where health or amenity impacts cannot be overcome satisfactorily, development should be refused.” It is the amenity and well-being, as opposed to health, aspects of this paragraph which are of relevance to the LPA’s case.
- 2.19 Section 5.14 of PPW relates to minerals. It identifies that “society needs, and will continue to need for the foreseeable future, a wide range of materials” (para 5.14.1). It advises that the “role of the planning authority in relation to mineral extraction is to balance the fundamental requirement to ensure the adequate supply of minerals with the protection of amenity and the environment” (para 5.14.2). It identifies the key principles as including:
- provide positively for the safeguarding and working of mineral resources to meet society’s needs now and in the future, encouraging the efficient and appropriate use of high quality materials;
 - reduce the impact of mineral extraction and related operations during the period of working by ensuring that impacts on relevant environmental qualities caused by mineral extraction and transportation, for example air quality and soundscape, are within acceptable limits

2.20 Para 5.14.3 states:

“In certain areas, mineral extraction may not be acceptable. For example, where a proposal for mineral extraction would cause demonstrable harm to the environment, including designated sites, or amenity, which cannot be overcome by planning conditions or agreements, planning permission should not be granted.”

2.21 With regard to the safeguarding of mineral resources and infrastructure, para 5.14.7 advises that it is “important that access to mineral resources... is safeguarded in order to prevent sterilisation...” but that “safeguarding does not indicate an acceptance of mineral working...”

2.22 With regard to ensuring supply, para 5.14.10 of PPW states that “Each mineral planning authority should ensure that it makes an appropriate contribution to meeting local, regional and UK needs for primary minerals which reflects the nature and extent of resources in the area and their best and most appropriate use, subject to relevant environmental and other planning considerations”. Para 5.14.11 states that “The contribution that a resource could make to UK demand where the mineral is of limited or restricted supply or regional demand must be taken into account when taking planning decisions. Seeking to meet only local needs or ruling out all forms of mineral working within an area will only rarely be acceptable on the basis of significant adverse impacts.”

2.23 Para 5.14.19 of PPW refers to areas of future working and states “Where necessary, planning authorities should provide a clear guide to where non-energy mineral extraction is likely to be acceptable and include policies which protect sensitive environmental designations or historic features and environmental and resource protection... These should be clearly identified on a proposals map and should... take the form of:

- Preferred Areas which will be areas of known resources with some commercial potential and where planning permission might reasonably be anticipated.”

2.24 With specific regard to aggregates, para 5.14.22 of PPW advises that “It is essential to the economic health of the country that the construction industry is provided with an adequate supply of the minerals it needs... The importance to the UK of aggregates should be taken into account when planning applications are being considered together with other policies

in this guidance and relevant Minerals Technical Advice Notes (MTANs) and Technical Advice Notes (TANs). In order to conserve natural resources, particular emphasis should be given to increasing the use of alternative products to primary materials where appropriate”.

2.25 Para 5.14.23 states “Aggregates suitable for road surfacing construction and maintenance, where high specification aggregates are required for skid resistance, are of importance to the UK82 and significant resources occur in Wales. The UK and regional need for such minerals should be accorded significant weight provided environmental impacts can be limited to acceptable levels.”

2.26 Para 5.14.42 states that “Mineral workings should not cause unacceptable adverse environmental or amenity impact. Where this is not possible working needs to be carefully controlled and monitored so that any adverse effects on local communities and the environment are mitigated to acceptable limits. Any effects on local communities and the environment must be minimised to an acceptable standard.”

2.27 With regard to buffer zones around mineral works PPW states:

“5.14.44 There is often conflict between mineral workings and other land uses as a result of the environmental impact of noise and dust from mineral extraction and processing and vibration from blasting operations. Buffer zones should be used by planning authorities to provide areas of protection around permitted and proposed mineral workings where new development which would be sensitive to adverse impact, including residential areas, hospitals and schools, should be resisted. Within the buffer zone there should be no new mineral extraction or new sensitive development, except where the site of the new development in relation to the mineral operation would be in a location remote from the active mineral site or on the far side of an existing built up area which already encroaches into the buffer zone. Other development, including industry, offices and some ancillary development related to the mineral working, which are less sensitive to impact from mineral operations, may be acceptable within the buffer zone on a case by case basis.

5.14.45 To avoid conflict between mineral workings and other land uses buffer zones should be identified in development plans around existing or proposed minerals sites. The maximum extent of the buffer zone would depend on a number of factors: the size, type and location of workings, the topography of the surrounding area, existing and anticipated levels of noise and dust, current and predicted vibration from blasting operations and availability of mitigation measures.

5.14.46 Buffer zones will of necessity vary in size depending on the mineral being extracted and the nature of the operation, but must be clearly defined and indicated on development plan proposals maps. This will ensure that there is unequivocal guidance on the proximity of mineral operations to sensitive land uses and that the potential impact of existing and future mineral workings is recognised and planned for in the area around the mineral operations. Further guidance on the factors that should be taken into account when defining buffer zones for particular minerals is provided in the MTANs. Whilst the primary purpose of buffer zones is to limit the impact of mineral working their wider beneficial role as part of green infrastructure provision and protecting and enhancing biodiversity should be explored.”

Minerals Technical Advice Note (Wales) 1: Aggregates (CD6.3)

- 2.28 Section C of MTAN1 identifies mechanisms for the reduction of the impact of aggregates production. With regard to buffer zones, it identifies that “Development plans are required to indicate the boundary of the buffer zone. Within the buffer zone, no new sensitive development or mineral extraction should be approved” (para 70). It goes on to define sensitive development as “any building occupied by people on a regular basis and includes housing areas, hostels, meeting places, schools and hospitals where an acceptable standard of amenity should be expected” (para 70).
- 2.29 The purpose of the buffer zone is identified as “to protect land uses that are most sensitive to the impact of mineral operations by establishing a separation distance between potentially conflicting land uses” (para 71). With regard to hard rock quarries it identifies that a “minimum” buffer zone of 200m should be adopted “unless there are clear and justifiable reasons” (para 71) for reducing this. The buffer zone should be defined “from the outer edge of the outer edge of the area where extraction and processing operations will take place, including site haul roads, rather than the site boundary” (para 71).

Regional Technical Statement for North and South Wales: 1st Review (August 2014)

(CD10.7)

- 2.30 The Regional Technical Statement for the North Wales and South Wales Regional Aggregate Working Parties - First Review provides suggested apportionments for each Minerals Planning Authority for crushed rock provision over a 25 year period (based on the usual 15 year life of an LDP with the need to have a minimum 10 year supply remaining at the end of the plan period). The document identifies that it should be considered a “strategic document for the purposes of Local Development Plan preparation and may be a material consideration in the development control process.”
- 2.31 For Rhondda Cynon Taf Mineral Planning Authority, Table 5.1 of the RTS 1st Review provides a suggested total apportionment of 17.25 million tonnes of crushed rock over 25 years (to 2036), and an annualised apportionment of 0.69 million tonnes of crushed rock per annum.
- 2.32 Paragraph 5.4 of the RTS 1st Review clarifies that “it is only the total apportionment over the duration of a particular LDP which matters and that, at the start of the relevant Plan period, the overall provision can be achieved through a combination of existing landbanks and (where necessary) new allocations. **There is no requirement for an MPA to maintain or limit their annual sales in line with either the annualised apportionment or the historical sales average**” (original emphasis).

Regional Technical Statements for the North Wales and South Wales Regional Aggregate Working Parties: 2nd Review (September 2020) (CD10.9)

- 2.33 The second review of the RTS (RTS2) covers the 25 years period up to 2041. For Rhondda Cynon Taf it provides a suggested total apportionment of 18.816 million tonnes of crushed rock over 25 years, and an annualised apportionment of 0.753 million tonnes per annum (Table 5.7). Table 5.7 also identifies that RCT had 9.830 million tonnes of existing permitted crushed rock reserves at the end of 2016, and an existing landbank of 13.1 years. It identified however that RCT had a shortfall of 8.986 million tonnes of permitted crushed rock reserves, which represented the minimum allocation to meet required provision.

- 2.34 With specific regard to RCT, Appendix B to RTS2 **(CD10.9)** identifies that “in the event that new allocations (or new permissions) cannot be made to address the shortfall, consideration may, subject to the circumstances and considerations set out in Annex A of the RTS Main Document, need to be given to collaborative working with neighbour LPAs within the same sub-region, such that some of the provision (apportionment) is effectively transferred” (page 58).
- 2.34 On 11th November 2021, Welsh Government issued a policy clarification letter to the Chief Planning Officers in Wales in order to rectify an arithmetical in RTS2. This resulted in an update to Table 5.7 of RTS2, amending the suggested total apportionment of crushed rock over 25 years for RCT to 19.125 million tonnes, and the annualised apportionment to 0.765 million tonnes per annum. The shortfall in permitted reserves was revised to 9.295 million tonnes. The figures in respect of existing permitted rock reserves and existing landbank were unaffected.
- 2.35 RCT CBC has not yet endorsed RTS2, however it is recognised that it has been endorsed by Welsh Government and consequently represents a material consideration in the determination of the Appeal, as well as in determining the soundness of the Revised LDP.
- 2.36 RCT will therefore need to accord with the RTS 2nd Review and its apportionment for RCT in the preparation of their Revised LDP. By the Deposit Stage (July 2024 based on the current timetable) at the latest, RCT would need to have identified how they would comply with apportionment requirements of the RTS 2nd Review, which will depend in part on the outcome of this appeal.
- 2.37 RCT would seek various avenues to meet the associated shorter or greater shortfall in our ability to meet the apportionment requirements. This would be done in accordance with National Policy including PPW edition 11, specifically section 5.14 and indeed the requirements of the RTS 2nd Review (including page 58/59 of the attached Appendix B of the RTS).
- 2.38 RCT will soon be undertaking a ‘Call for Candidate Sites’ for the Revised LDP where landowners and mineral operators can put forward their sites to be considered for mineral extraction. Some may be suitable for allocation or the next level down of certainty in PPW

11, being Preferred Areas. If these were not forthcoming, RCT would also look at the next level down of Areas of Search for Minerals, and if they find appropriate areas, then operators may take forward and provide appropriate proposals within them.

- 2.39 RTS 2 also requires that a Statement of Sub Regional Collaboration (SoSRC) takes place. (RCT are in a sub-region with Merthyr Tydfil, Bridgend, Caerphilly, Vale of Glamorgan and Cardiff). All authorities, regardless of their ability to meet their own apportionment themselves, should be part of the preparation and agreement of this Statement. The details of how this SoSRC should be prepared is set out in Annex A of RTS2 **(CD10.9)**. If it can be proven that individual Local Authorities cannot meet their own apportionment requirements, then this Statement process can allow for other Local Authorities, that have a greater landbank surplus, to increase their apportionment on behalf of those who can't.

Local Planning Policy and Guidance

Development Plan

- 2.40 In this instance the development plan for the area comprises of the RCT Local Development Plan (to 2021) which was adopted in March 2011 **(CD7.3)**. The intended period for the Local Development Plan has now expired but the LDP continues to be part of the development plan (as a pre-January 2016 LDP) and is not subject to the automatic 'cessation' provisions introduced by virtue of the Planning (Wales) Act 2015. As clarified in the Dear CPO letter of 24th September 2020 from the Minister for Housing and Local Government, the LDP will remain in force until such time as a replacement LDP is adopted by the LPA.
- 2.41 The adopted Local Development Plan Proposals Map identifies the following designations in respect of the Appeal Site:
- Sandstone Resources (AW14.2)
 - Quarry Minerals Buffer Zone (AW14.5)
 - Regionally Important Geological and Geomorphical Sites (AW8)
 - Preferred Area of Known Mineral Resource (SSA25)

Policy CS10 - Minerals

- 2.42 Policy CS10 relates to minerals and seeks to “*protect resources and to contribute to the local, regional and national demand for a continuous supply of minerals, without compromising environmental and social issues*”. The policy identifies a number of criteria to be met in order to achieve these goals including, of particular relevance in this instance:
1. *Maintaining a minimum 10 year landbank of permitted rock aggregate reserves throughout the plan period (to 2021), together with an extended landbank in the form of a Preferred Area of Known Mineral Resource;*
 6. *Ensuring that impacts upon residential areas and sensitive land uses from mineral operations and the transportation of minerals are limited to an acceptable proven safe limit.*
- 2.43 The supporting text to Policy CS10 identifies that “the LDP minerals policies will balance the need for safeguarding of nationally, regionally and locally important mineral resources whilst considering their appropriate extraction against the potential impact of such development on residential and sensitive occupiers...” (para 4.92). In this regard it identifies that “National policy in respect of aggregates, describes distances from mineral operations where residential and other sensitive use developments may not take place. These principles also apply to the restriction of aggregate extraction within these prescribed distances from settlements i.e. no Sandstone or Limestone extraction within 200 metres...” (para 4.96). It goes on to clarify “there is, however, some scope identified within national guidance where *exceptional* circumstances of a particular proposal *may* allow for the reduction in the above standard distances.” (added emphasis) (para 4.97). It also confirms that minerals applications are subject to other area wide LDP policies, including AW5 and AW10 (para 4.98).

Policy AW5 – New Development

- 2.44 Policy AW5 relates to new development and advises that development proposals will be supported where they meet certain criteria relating to design and accessibility. Amongst these criteria is the requirement that “(c) there would be no significant impact upon the amenities of neighbouring occupiers” and that “(d) the development would be compatible with other uses in the locality”.

Policy AW8 – Protection and Enhancement of the Natural Environment

- 2.45 Policy AW8 requires Rhondda Cynon Taf’s distinctive natural heritage to be preserved and enhanced by protecting it from inappropriate development. With regard to Regionally Important Geological Sites (RIGS) the policy states that development proposals will only be permitted where they would not cause harm to the RIGS, unless it can be demonstrated that “(a) the proposal is directly necessary for the positive management of the site”, or “(b) the proposal would not unacceptably impact on the features of the site for which it has been designated”, or “(c) the development could not reasonably be located elsewhere and the benefits of the proposed development clearly outweigh the nature conservation value of the site”.

Policy AW10 – Environmental Protection and Public Health

- 2.46 Policy AW10 relates to environmental protection and public health and identifies that development proposals “will not be permitted where they would cause or result in a risk of unacceptable harm to health and / or local amenity” as a result of, amongst other matters, “(1) Air pollution”, “(2) Noise pollution”, “(9) or any other identified risk to... local amenity and public health... unless it can be demonstrated that measures can be taken to overcome any significant adverse risk to public health, the environment and / or impact upon local amenity.”

- 2.47 The supporting text to Policy AW10 states:

“5.63 Pollution may cause significant damage to human health, quality of life and residential amenity, as well as impact upon both the natural and built environment. This policy will ensure that developments that would result in unacceptably high levels of noise, light, water and / or air pollution are located away from residential areas and other sensitive uses. The policy will also ensure that new development is not located in close proximity to existing sources of pollution. Amenity is defined as the pleasant or satisfactory aspects of a location, or features which contribute to its overall character and the enjoyment of residents or visitors.”

Policy AW14 – Safeguarding of Minerals

- 2.48 Policy AW14 relates to the safeguarding of minerals. It states that certain mineral resources shall be safeguarded from any development “which would unnecessarily sterilise them or hinder their extraction”. Part 5 of Policy AW14 states that “(5) The Limestone and Sandstone quarries at Forest Wood, Hendy and Craig yr Hesg, will be further safeguarded from development that would adversely affect their operations by 200 metre buffer zones as shown on the proposals maps.”
- 2.49 The supporting text for Policy AW14 clarifies that “the identification of safeguarding areas for the above minerals in Rhondda Cynon Taf does not carry any presumption that planning permission would be granted for their extraction.”

Policy SSA25 – Preferred Area of Known Mineral Resource

- 2.50 Policy SSA25 identifies Craig Y Hesg Quarry as a Preferred Area of Known Mineral Resource. The supporting text to the policy advises that “A Minerals Background Paper has been prepared for the LDP to outline current and future minerals circumstances in Rhondda Cynon Taf. Further detail on the landbank process, safeguarding intentions and buffer zones, amongst other minerals issues, are set out in this Paper.”

LDP Minerals Background Paper (December 2009) (CD7.1)

- 2.51 The LDP Minerals background paper, published by RCT in December 2009, was prepared to provide detailed clarification of, and outline the evidence behind, the formulation of the then Deposit Plan’s mineral policies. It had regard to national and regional policy as it was at the time of publication, including Planning Policy Wales (2000), MTAN1: Aggregates, and the Regional Technical Statement for Aggregates (2008).
- 2.52 With specific regard to the preferred area of known mineral resources at Craig Y Hesg Quarry, the background paper identifies that the site was the only one which was promoted as a candidate Site for future mineral extraction (p8). It goes on to confirm that “the designation of the site does not afford the land, and specifically the entire boundary of the site, guaranteed permission for extraction here. Indeed, further evidence would be required to show how extraction from this land will take place in accordance with current National Planning Guidance”. Furthermore, further evidence will be required to show how much of the site could be developed, and how much mineral is available here, and what is

required to be extracted. MTAN1 para 71 requires there to be “clear and justifiable reasons for reducing the distances”, i.e. the advised 200m minimum buffer zone for rock quarries” (p8).

3. **PLANNING HISTORY**

3.1 The consents for the extraction activities at the site are as follows:

08/1380/10: Application for determination of conditions for mineral site incorporating the four existing planning permissions listed below. (Review of Old Mining Permissions (ROMP) under The Environmental Act 1995) (CD10.1)

3.2 This Initial Review of Old Mining Permissions (ROMP) application sought approval of conditions in respect of mineral operations at the Craig Y Hesg Quarry site under Schedule 13 of the Environment Act 1995.

3.3 The application identified that, at the time, there was a large stockpile of dust/fines aggregate within the eastern part of the quarry which was sterilising underlying reserves of stone. In response to this the application proposed to deepen the southern/south-western areas of the quarry to the approved depth to accommodate the dust/fine aggregate, in order to provide access to reserves currently sterilised by the stockpile.

3.4 The works identified within the application included:

- Quarrying to the limits defined in the existing permission
- The deepening of the quarry to a final base level of 100m AOD
- The development of the quarry faces and benches in a north-west and north-easterly direction to create a wider floor
- The creation of a narrow cutting through to the processing plant site which will provide a low level access to the base of the quarry.

3.5 The application was approved on 24/04/13 and represents the extant ROMP consent for the site, which expires on 31st December 2022.

3.6 The four minerals permissions referenced in the ROMP consent were as follows:

56/86/0827: Extension to Existing Sandstone Quarry. Approved 20/08/93.

349(Z)970: Extension of Quarry Working Area. Approved 27/01/70.

P22/Z/596: Extension to Quarry. Approved 20/08/65.

5183: Quarry. Approved 07/01/49.

Other significant consents are as follows:

13/1039/10: Improvements to quarry entrance to provide two way quarry entrance and exit. Granted 14/03/13.

13/0825/23: Erection of an asphalt plant within Class B, Part 19 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995. Granted 18/1/13.

T/99/2567: Proposal to replace part of existing dry stone processing plant- Approval of detailed plans under the Town and Country Planning (General Permitted Development) Order 1995. Granted 06/09/99.

349/223/71: Crushing, screening and coating plant. Permitted Development (no date)

4. **THE CASE FOR THE LPA**

(APP/L6940/A/21/3282880) – Continuation of Quarrying at the existing site (APPEAL B)

LPA Decision

4.1 On 8th October 2021 the LPA refused the planning application for the following reason:

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

4.2 In response to advice provided by Amity Planning, which had been asked to undertake a planning review, a further report was taken to the 10 February 2022 meeting of the Council's Planning and Development Committee, asking the Committee to consider the issues raised by the appointed consultant and to clarify the matters in respect of the appellants suggested issues of inconsistency of their earlier decisions. At that meeting the Committee resolved to agree the recommendations/approach as set out in the report including, of relevance to Appeal B:

- (b) Members clarified that their concerns in relation to the western extension application (15/0666) were not limited to the new extension area but applied to the site overall;
- (c) Members clarified that the imposition of a condition to preclude extraction or processing within 200m of sensitive development would not address their concerns; and
- (d) Members endorsed the views of the planning consultancy as set out in the Statement of Case in respect application 15/0666 and 21/0720 as summarised in the report.

- 4.3 For clarity, the Statement of Case in respect of Appeal B identified relevant LDP and national policy. The case for the LPA can therefore be summarised as follows:
- The impacts of current quarrying operations (especially in terms of noise, dust and blasting) currently give rise to an unacceptable detrimental harm to the amenity and well-being of residents.
 - The proposed continuation of the quarry use would extend the exposure of local residents to these impacts and consequent unacceptable detrimental harm to amenity for a further 6 years, in conflict with LDP Policies CS10, AW5 and AW10.
 - There are no material considerations which indicate that a decision should be made other than in accordance with the Development Plan and thus the appeal should be dismissed.

The Proposals

- 4.4 The application sought planning permission for the continuation of quarrying at the existing site to 2028 by way of the variation of conditions imposed on the extant ROMP permission (08/1380//10). The activity associated with continuation of quarrying is described in detail within the accompanying Environmental Statement (**CD3.1**). Whilst not intended specifically for this purpose, Table 11-14 on Page 132 of the Environmental Statement identifies some of the key relationships between various activities at the quarry and nearby uses, including residential and other sensitive uses. This includes:
- A 40m distance between the nearest residential property on Rogart Terrace (R1) and access and storage activity
 - A 50m distance between older-persons apartments on Garth Avenue (R4) and processing activity
 - A 45m distance between the nearest residential property on Garth Avenue (R7) and haul road and processing activity
 - A 55m distance between the nearest residential property on Gardner Close (R8) and haul roads and processing activity
- 4.5 Furthermore, the application plans CYH4, CYH5 and CYH6 (**CD3.4**) indicate the continuation of extraction activity less than 200m to the south of the nearest residential properties (see plan at Appendix 5).

Accordance with the Development Plan

- 4.6 Section 38(6) of the Planning and Compulsory Act 2004 requires that, where regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, “the determination must be made in accordance with the plan unless material considerations indicate otherwise.”
- 4.7 Whilst it is noted that the planning application was made under section 73 of the 1990 Act, what is sought is a new planning permission and so section 70 of the 1990 Act applies to require the development plan (LDP) to be considered. This means that the duty in section 38(6) of the 2004 Act applies to the development. A key condition that the application seeks to change is Condition 1 of the ROMP Permission (which set the deadline of 31 December 2022) and the application seeks to extend the period of minerals working for a further 6 years. The ROMP Permission does not establish that mineral working is acceptable after December 2022 and the acceptability of the proposal for working the site in that new period of time therefore falls to be considered afresh in the light of all relevant LDP policies.
- 4.8 As previously identified, Policy CS10 relates to minerals and seeks to “*protect resources and to contribute to the local, regional and national demand for a continuous supply of minerals, without compromising environmental and social issues*”. The policy identifies a number of criteria to be met in order to achieve these goals including, of particular relevance in this instance:
1. *Maintaining a minimum 10 year landbank of permitted rock aggregate reserves throughout the plan period (to 2021), together with an extended landbank in the form of a Preferred Area of Known Mineral Resource;*
 6. *Ensuring that impacts upon residential areas and sensitive land uses from mineral operations and the transportation of minerals are limited to an acceptable proven safe limit.*
- 4.9 The wording of Policy CS10 is clear and absolute with regard to both contribution to minerals supply and protection of amenity. The LPA is required to meet both criteria (1) and (6), and the wording of the policy affords no flexibility or compromise in respect of either the maintenance of the 10 year landbank of permitted rock aggregates, nor the amenity impact upon residential or other sensitive land uses. It is anticipated that it would

have been envisaged at the time of drafting of the LDP that both criterion could have been met, but where they cannot then this would represent a conflict with the LDP.

- 4.10 The South Wales Regional Aggregates Working Party (SWRAWP) Annual Report for 2019 (published May 2021) indicates a landbank of permitted reserves in RCT of 11 years as at December 2019 based upon average sales over a 3-year period (2017 – 2019), or 12 years based upon average sales over a 10 year period (2010 – 2019). (The actual reserve figure and average sales in RCT over these periods is not included in the Annual Report since the figures are combined with reserves and sales in Merthyr Tydfil CBC).
- 4.11 Permitted reserves within RCT as at the end of 2020 were 6.98 m tonnes, comprising a reserve of 3.33m tonnes at Craig yr Hesg Quarry and 3.65m tonnes at Forest Wood Quarry (based upon Annual Monitoring returns to RCT provided by Hanson). The ten year production average was 590,000 tonnes providing a landbank of 12 years.
- 4.12 I acknowledged that the extension of quarry operations from 2022 to 2028 would contribute towards the Council’s requirements under Criterion (1) of LDP Policy CS10. I further acknowledged that there are currently no other proposals or active sites which would contribute towards this landbank. In this regard, the appeal scheme would accord with Criterion (1) of LDP Policy CS10. Policy CS10 however requires that any contribution to the supply of mineral must be achieved “without compromising environmental and social issues” by, amongst other criteria, “(6) Ensuring that impacts upon residential areas and sensitive land uses from mineral operations and the transportation of minerals are limited to an acceptable proven safe limit”.
- 4.13 The supporting text to Policy CS10 advises that “the LDP minerals policies will balance the need for safeguarding of nationally, regionally and locally important mineral resources whilst considering their appropriate extraction against the potential impact of such development on residential and sensitive occupiers...” (para 4.92). In this regard the terminology used in the supporting text appears to place a slightly different emphasis on achieving the two potentially competing interests of amenity and mineral extraction, suggesting that these considerations are to be balanced against one another. Where there is an apparent conflict between supporting text and the primary policy however, it is the

policy which takes precedence, and so any alternate emphasis indicated within the supporting text should be afforded no weight.

- 4.14 The supporting text goes on to identify that “National policy in respect of aggregates, describes distances from mineral operations where residential and other sensitive use developments may not take place. These principles also apply to the restriction of aggregate extraction within these prescribed distances from settlements i.e. no Sandstone or Limestone extraction within 200 metres...” (para 4.96). It goes on to clarify “there is, however, some scope identified within national guidance where *exceptional* circumstances of a particular proposal *may* allow for the reduction in the above standard distances.” (added emphasis) (para 4.97). Even in a scenario where exceptional circumstances which allowed for a reduction in the standard distances, Policy CS10 still requires that this be without compromise of the amenity of residential or other sensitive land uses.
- 4.15 Para 4.98 of the supporting text to Policy CS10 also confirms that “Any minerals planning applications would also be subject to a range of area wide policies and their objectives throughout the LDP”. The five policies cited include Policy AW5 (New Development) and Policy AW10 (Environmental Protection and Public Health).
- 4.16 Policy AW5 relates to new development and advises that development proposals will be supported where they meet certain criteria relating to design and accessibility. Amongst these criteria is the requirement that “(c) there would be no significant impact upon the amenities of neighbouring occupiers” and that “(d) the development would be compatible with other uses in the locality”.
- 4.17 Policy AW10 relates to environmental protection and public health and identifies that development proposals “will not be permitted where they would cause or result in a risk of unacceptable harm to health and / or local amenity” as a result of, amongst other matters, “(1) Air pollution”, “(2) Noise pollution”, “(9) or any other identified risk to... local amenity and public health... unless it can be demonstrated that measures can be taken to overcome any significant adverse risk to public health, the environment and / or impact upon local amenity.”.

4.18 The supporting text to Policy AW10 states:

“5.63 Pollution may cause significant damage to human health, quality of life and residential amenity, as well as impact upon both the natural and built environment. This policy will ensure that developments that would result in unacceptably high levels of noise, light, water and / or air pollution are located away from residential areas and other sensitive uses. The policy will also ensure that new development is not located in close proximity to existing sources of pollution. Amenity is defined as the pleasant or satisfactory aspects of a location, or features which contribute to its overall character and the enjoyment of residents or visitors.”

4.19 Whilst, therefore, Policy AW10 allows for mitigation measures to be promoted as part of a development, like LDP Policy CS10 it does not allow for amenity standards to be compromised as a result of development, requiring that development proposals which would give rise to, or risk, unacceptable harm to amenity, not be permitted. The policy text makes it clear that this includes not only more typical impacts such as air pollution and noise pollution, but extends to “any other identified risk to... local amenity and public health”. The supporting text to Policy AW10 makes it clear that amenity is a broad consideration, which “includes the pleasant or satisfactory aspects of a location, or features which contribute to its overall character and the enjoyment of residents or visitors.” Under Policy AW10 therefore any development proposals which would cause, or risk, unacceptable harm to amenity, to include the pleasant or satisfactory aspects of a location, or features which contribute to its overall character and the enjoyment of residents or visitors, should be refused. This provides a clear presumption in respect of the preservation of amenity, including the enjoyment of an area by its residents, and places a heavy emphasis on developers to evidence that their proposals do not have an unacceptable detrimental impact on amenity in its broadest sense.

4.20 The elements of amenity which are linked to the enjoyment of a given location by residents are, by their nature, subjective and nuanced, which will be influenced by individual and community expectations and experiences. Where future development proposals are put forward on a site not already used for that purpose, baseline assessment and modelling of quantifiable measures provides the only possible method for analysing the likely impact of a development on the amenity of an area and its residents –

by its nature however, such an approach has its limitations – measurements and modelling are subject to margins of error and only easily quantifiable considerations can be measured and modelled. With regard the myriad of nuanced factors which contribute towards the enjoyment of an area by its residents, such an approach paints only part of a picture.

- 4.21 Where a use is currently operating however then this enables a far more direct, empirical measurement of the impacts of that use upon the enjoyment of a location through the analysis of the experience of local communities and residents. In circumstances where an application seeks to carry forward an existing use, both empirical evidence as to the impacts of the current use as experienced by the local community and technical assessments/predictions of the effects of the future proposals will be relevant to an assessment of the acceptability of the effects and it is a matter of planning judgment as to which should carry more weight if they provide different indications of the likely effects.

Objections to Planning Applications

- 4.22 I am a planner and not a lawyer. However, I am advised that the Courts have held that local objections concerning the local community's and residents' perceptions of harm from a development can be material considerations where (a) they relate to land use matters such as physical emanations from the development that are part of the character of the use, (b) the objections are genuine, and (c) the objections are justified or warranted. Objections can be justified or warranted even if they are not supported by objective or scientific evidence, for example, where they are based on empirical evidence of past events associated with the use. I attach two Court of Appeal judgments which cover these matters, (a) *Newport Borough Council v Secretary of State for Wales* (1997) (Appendix 1), and (b) *West Midlands Probation Committee v Secretary of State for the Environment* (1997) (Appendix 2). Obviously, it is not for me to make legal submissions about these cases but I have proceeded to consider the objections of local residents on the basis of what I am advised are the correct tests to see if (a) they relate to land use matters, (b) they are genuine, and (c) they are justified or warranted. As I explain below, I consider these tests are met with regard to the objections concerning noise, blasting, and dust.

- 4.23 A total of 332 individual letters of objection and a petition of 103 signatures were received in respect of application 15/0666/10, whilst application 21/0720/15 received 14 individual

letters of objection (the latter are relevant in this context insofar as they relate to the current experience of local residents).

4.24 Within the overwhelming majority of the letters of objection received, the objections made in respect of both proposals were based upon significant issues already experienced by the residents of Glyncoch and the surrounding area as a result of existing operations at the quarry. In this regard these objections provide a useful insight into the experience of the residents of the area in living with the quarry on their doorstep. They paint a bleak picture of significant, and far-reaching, harm to various elements of the amenity experienced by local residents as a result of quarrying activity (a sample of these letters is included at Appendix 3). Key themes consistently raised by local residents within the correspondence include:

- Shock, distress and upset as a result of noise and vibration from blasting operations
- Blasting occurring without prior notification further exacerbating the impact, in breach of the commitment from Hanson to notify neighbours in advance
- Intensification of blasting operations in both strength and frequency over recent years
- Extent of dust on property and in the air
- Cracks and other damage to properties attributed by residents to the quarry operations, in particular blasting

EHO/General Complaints

4.25 Craig Y Hesg quarry existing has, and continues to, generate a significant number of ongoing complaints from local residents in respect of the ongoing adverse detriment to their amenity experienced as a result of operations at the quarry. Unfortunately the Council have not historically retained comprehensive records of these complaints. Since 18th February 2020 however a complete record of complaints has been retained by RCTCBC and again they provide an insight into the experience of the residents of Glyncoch and the area surrounding area in living with the quarry. A total of 74 complaints were received between 18th February 2020 and 26th April 2022, including in respect of the following matters:

- Significant distress caused to complainants/family members/visitors as a result of noise and vibration from blasting

- Blasting occurring without prior warning, which adds to distress and shock
- Perception of increased blast intensity and damage to property
- Alleged structural damage to property as a result of blasting
- Properties shaking when blasting takes place.
- The frequency, severity, and timing of the blasts and the noise they create.
- Dust and air quality
- Allegations that blasts are not properly monitored.

Conclusions

- 4.26 It is quite clear from the number and nature of the ongoing complaints made in respect of current operations at the quarry, both within and outside of the planning process, that the pollution outputs arising from current activities at the quarry, including noise, dust and blasting are resulting in a myriad of adverse impacts on various components/facets of amenity as experienced by a large number of residents in the area. This includes shock and distress arising from noise and blasting, and the levels of dust experienced on property.
- 4.27 Having regard to the established tests, the objections and complaints relate specifically to impacts arising from the use of the quarry, and so do very clearly relate to land-use matters. Furthermore, having regard to the fact that the objections and complaints relate to an existing use, the quantum, nature and consistency of these objections and complaints leave me in little doubt that they are genuine, justified and warranted.
- 4.28 Many of the issues identified are difficult or impossible to quantify through empirical measurements or modelling. Cumulatively however, as is evidenced by the lived experience of the residents of Glyncoch and the surrounding area, these issues and concerns very clearly and significantly detract from the enjoyment of their homes experienced by for a significant number of local residents. and consequently it is my view that the threshold of an unacceptable harm to amenity as set-out in Policy AW10 has already been exceeded by virtue of activity at the quarry.
- 4.29 This is not a case of NIMBYism and fear of future change, this an existing real and lived experience by local residents, whose day-to-day enjoyment of their own homes is current significantly compromised by the impacts of the quarry. The existing operations at the

quarry, most recently approved under ROMP permission 08/1380/10, including activity in close proximity to residential properties (as detailed in paras 4.4 and 4.5 above), give rise to unacceptable harm to amenity. In light of the evidence of the experience of local residents, it would not be correct to allow these operations to continue.

- 4.30 In giving rise to unacceptable harm to amenity the development would fail to accord with LDP Policy CS10 (7), Policy AW5 and Policy AW10.
- 4.31 The proposed development would not represent a conflict with LDP Policy AW14, which requires the safeguarding of a number of quarries, including Craig Y Hesg, from development that would adversely affect their operations through 200m buffer zones. This policy and associated buffer zones on the LDP proposals map however only have regard to the avoidance of the sterilisation of the resource, and not the preservation of the amenity of existing residents and other sensitive uses. Indeed a proposed policy in the draft LDP which was intended to provide a buffer to sensitive uses (AW15 – Community Amenity Protection Zones) was deleted by the Inspector following representations on behalf of the Appellant on the basis “that rigid distances would conflict with national policy” and that the submitted plan did not set out how flexibility could be applied (para 12.18 of the Inspector’s report) **(CD7.2)**. The Inspector was clear however that this did not undermine the LPA’s ability to “resist mineral working in unsuitable locations”, but rather it was agreed that the LDP included other policies that would the Council to do just this (para 12.18). Indeed the supporting text to Policy AW14 clarifies that the safeguarding of a mineral does not provide any favourable presumption in favour of their extraction.
- 4.32 Likewise, LDP Policy SSA25 identifies Craig Y Hesg Quarry as a Preferred Area of Known Mineral Resource, and so no conflict with Policy SSA25 would arise as a result of the development. Again, however, there is no provision within this policy for any compromise of amenity in order to deliver the extraction of resources.
- 4.33 Para 1.46 of the LDP confirms that “The LDP should be read as a whole, many of the Plans objectives, strategies and policies are cross-cutting and inter-related. Decisions on development proposals will have regard to the relevant policies in the Plan and the requirements of National Planning Policy.”

4.34 Having regard to the above, whilst the development proposals are considered to accord with the minerals safeguarding and supply criteria of Policies CS10, AW14, and SSA25, the development fails in its requirement to balance this against the requirement to preserve amenity as set out in Policies CS10, AW5 and AW10 and, as such, the proposals are not in accordance with the development plan.

Other Material Considerations

4.35 Given that the proposed development does not accord with the development plan then, by virtue of Section 38(6) of the Planning & Compulsory Purchase Act 2004, it is necessary to establish whether any over-riding material considerations exist. Material considerations in this instance include:

- Planning Policy Wales (Edition 11)
- Minerals Technical Advice Note (Wales) 1: Aggregates
- Wellbeing of Future Generations (Wales) Act 2015
- RTS First Review (August 2014)
- RTS Second Review (September 2020)
- LDP Minerals Background Paper (December 2009)

Well-being of Future Generations (Wales) Act 2015

4.36 In order to properly exercise its functions in accordance with the sustainable development principle, RCT CBC are obliged to consider how their well-being objectives impact upon each other, in particular whether steps taken to meet one objective may be detrimental to another. The continuation and extension of quarrying operations at the site would be broadly aligned with the WFGA goal of a prosperous Wales, and the corresponding RCT CBC objective of enabling prosperity. The adverse impact upon the amenity and well-being of residents arising however would mean that proposals would inherently conflict with the goal of a healthier Wales in respect of ensuring a society where people's mental well-being is maintained, and the corresponding RCT CBC objective of ensuring that people are healthy. In this instance, in accordance with their obligations, the LPA have weighed up these matters with the conclusion that the contribution to the objective of prosperity does not outweigh the adverse impact upon achieving the objective relating to health and consequently that the development would not constitute sustainable development. I would concur with this conclusion.

Planning Policy Wales

- 4.37 With regard to the safeguarding of minerals resources, PPW requires that “areas to be safeguarded should be identified on proposals maps and policies should protect mineral resources from permanent development which would either sterilise them or hinder extraction” (para 5.14.9). In this regard the site forms part of a much wider area of “Sandstone Resource” on the adopted LDP Proposals Maps, and corresponding policy AW14 affords these areas broad safeguarding from development which would unnecessarily sterilise them or hinder their extraction. Para 5.14.7 of PPW however makes it clear that “safeguarding does not indicate an acceptance of mineral working”. The proposed development would not conflict with the safeguarding requirements of Planning Policy Wales, but nor do these safeguarding requirements provide any additional material considerations beyond those considered in respect of the development plan.
- 4.38 With regard to ensuring supply of minerals, the development would contribute towards the authority’s supply of a primary mineral in accordance with para 5.14.10 of PPW. As a mineral of UK and regional demand, this contribution ““must be taken into account when taking planning decisions” (para 5.4.11). Para 5.4.11 goes on to advise that “seeking to meet only local needs or ruling out all forms of mineral working within an area will only rarely be acceptable on the basis of significant adverse environmental impacts”. Of course the refusal of planning permission instance would not represent neither a intention to meet only local needs, or an intention to rule out all forms of mineral working in the RCT authority area, but simply that, in this instance, the need does not outweigh the adverse amenity impacts.
- 4.39 Furthermore, it is recognised that, in accordance with para 5.14.23, as a high specification aggregate, this should be afforded significant weight. This is only, however, “provided environmental impacts can be limited to acceptable levels”. Likewise para 5.14.42 sets a threshold of minimise effects on local communities to an “acceptable standard”. In this instance they have not been and cannot be, as has been evidenced by the experience of local residents. In accord with para 3.21 therefore, as the amenity impacts cannot be satisfactorily overcome, “development should be refused”.

Minerals Technical Advice Note (Wales) 1: Aggregates

- 4.40 The purpose of establishing buffer zones as cited in MTAN1 is to afford protection to land uses that are most sensitive to the impact of mineral operations by “establishing a separation distance between potentially conflicting land uses” (para 71). For hard rock quarries it identifies a “minimum” buffer zone of 200m “unless there are clear and justifiable reasons” for reducing this.
- 4.41 Para 70 of MTAN1 states that within the buffer zone, “no new sensitive development or mineral extraction should be approved”, with sensitive development encompassing “any building occupied by people on a regular basis and includes housing areas, hostels, meeting places, schools and hospitals where an acceptable standard of amenity should be expected”. It is the Appellant’s view, as set-out in the SOCG, that the reference to ‘building’ in this context means that no regard needs to be given to any external amenity space associated with sensitive land uses when considering the 200m buffer zone. I would contend however that the Appellant’s position on this is tenuous, reliant as it is on the single reference term to the ‘building’, and is misaligned with the accepted position in other guidance and standards (for example TAN11: Noise **(CD6.3)**) that the amenity standards to be achieved within external amenity areas is an important consideration in taking planning decisions. Indeed, the very next paragraph of MTAN1 (para 71) confirms that the objective of the buffer zones is to “protect land *uses* that are most sensitive to the impact of mineral operations by establishing a separation distance between potentially conflicting land *uses*.” (added emphasis). A land-use of course does not stop at the wall of a building.
- 4.42 The amenity impacts identified by MTAN1 as being most prevalently associated with minerals working (including dust and noise and vibration from blasting) would be expected to be just as keenly felt, if not more keenly felt in, for example, private gardens than inside the associated dwellings. Indeed the common sense position that external amenity areas cannot simply be ignored in the consideration of buffer zones was precisely RCT’s interpretation of the requirement for buffer zones in their Minerals Background Paper where they stated that “It is necessary to identify buffer zones around these resources to safeguard their boundaries from *land uses* which may sterilise them or hinder their extraction. Permanent development *and land uses* that would be considered unsuitable within the safeguarding area and the buffer zone would include residential development,

hospitals and schools, or where an acceptable standard of amenity should be expected” (p11) (added emphasis). The latter sentence also appears in the supporting text to LDP Policy AW14 – Safeguarding of Minerals (para 5.90).

- 4.43 In any instance the use of the term ‘building’ in the definition of sensitive development only appears in the context of the introduction of “new” sensitive development into a buffer zone. Of course, what is proposed here is a new planning permission for quarrying, including the continuation of activity less than 200m from sensitive uses. In the unlikely event that, at odds with other standards and guidance associated with the preservation of amenity, MTAN1 did not intend for regard to be given to sensitive external amenity areas in the consideration of buffer zones, it would at least appear to have had regard to the additional sensitivity associated with pre-existing expectations of amenity standards in existing sensitive uses.
- 4.44 Either way there is little merit to the Appellants position that the potential impact of quarrying activity on external amenity areas should be given no regard in the consideration of buffer zones.
- 4.45 Irrespective, however of whether external amenity areas should be accounted for in the consideration of buffer zones it should not be a matter of dispute that the proposed development would involve the continuation of extraction and/or processing activity within 200m of sensitive uses. The LDP Proposals Map (**CD7.5**) identifies circa 150 properties within the 200m buffer zone.
- 4.46 As such, MTAN1 requires that consideration be given as to whether there are “clear and justifiable reasons” for a reduction in the buffer. The example provided within MTAN1 is where, “because of other means of control, there is very limited impact from the mineral extraction site”. In this instance it has been established that there is a significant adverse impact on residential amenity and, indeed, any arguments that appellant promotes that the need for the mineral provides a clear and justifiable reason in its own right are flawed because, of course, under para 3.21 of PPW, where the amenity impacts cannot be satisfactorily overcome, “development should be refused”.

LDP Minerals Background Paper (December 2009)

- 4.40 The LDP Minerals background paper, published by RCT in December 2009, was prepared to provide detailed clarification of, and outline the evidence behind, the formulation of the then Deposit Plan's mineral policies. It had regard to national and regional policy as it was at the time of publication, including Planning Policy Wales (2000), MTAN1: Aggregates, and the Regional Technical Statement for Aggregates (2008).
- 4.41 With specific regard to the preferred area of known mineral resources at Craig Y Hesp Quarry, the background paper identifies that the site was the only one which was promoted as a candidate Site for future mineral extraction (p8). It goes on to confirm that "the designation of the site does not afford the land, and specifically the entire boundary of the site, guaranteed permission for extraction here. Indeed, further evidence would be required to show how extraction from this land will take place in accordance with current National Planning Guidance". Furthermore, further evidence will be required to show how much of the site could be developed, and how much mineral is available here, and what is required to be extracted. MTAN1 para 71 requires there to be "clear and justifiable reasons for reducing the distances", ie the advised 200m minimum buffer zone for rock quarries."
- 4.42 The LDP Minerals Background Paper provides a summary of the evidence base behind, and matters considered in the formulation of, the mineral policies in the adopted Local Development Plan. It does not, however, identify any additional relevant material considerations to which regard should be given, beyond those already set-out in the development plan and national policy and guidance, and nor does it identify any additional matters which would influence the weight to be given to any material considerations in the planning balance.

Regional Technical Statement for North and South Wales: 1st Review (August 2014)

- 4.43 The contribution that the development would make towards achieving RCT's apportionment of crushed rock is recognised, and the development would accord with the requirements of RTS1, however RTS1 does not identify any additional material considerations which would indicate a decision other than in accordance with the development plan.

Regional Technical Statements for the North Wales and South Wales Regional Aggregate Working Parties:2nd Review (September 2020)

- 4.44 The contribution that the development would make towards achieving RCT's apportionment of crushed rock is recognised, and the development would accord with the requirements of RTS1, however RTS1 does not identify any additional material considerations which would indicate a decision other than in accordance with the development plan.

Conclusions

- 4.45 With regard to other material considerations, the policy documents and related guidance cover issues on need and impacts that are already addressed within the policies of the LDP. Having applied those policies to the appeal proposal, I do not consider that the other material considerations carry sufficient weight to justify a decision that is not in accordance with the development plan. The well-being goals set out in the 2015 Act also cover the same issues, and involve balancing competing factors of economic goals and environmental and social goals, and I consider that the goal of a healthier Wales is a material consideration which supports a decision in line with the development plan. On balance, the I do not consider that the development would constitute sustainable development.

APP/L6940/A/20/3265358 – Western Extension (APPEAL A)

- 4.46 The LPA refused the planning application for the following reason, contrary to officer advice:

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

- 4.47 In response to advice provided by Amity Planning, which had been asked to undertake a planning review, a further report was taken to the 10 February 2022 meeting of the

Council's Planning and Development Committee, asking the Committee to consider the issues raised by the appointed consultant and to clarify the matters in respect of the appellants suggested issues of inconsistency of their earlier decisions. At that meeting the Committee resolved to agree the recommendations/approach as set out in the report including, of relevance to Appeal A:

- (a) Members clarified with regard to the western extension (15/0666), whilst clear encroachment on to sensitive properties was at the forefront of their thinking, Members were also mindful of the wider health and well-being issues and indeed this is reflected in the reports they based their decision on
- (c) Members clarified that the imposition of a condition to preclude extraction or processing within 200m of sensitive development would not address their concerns; and
- (d) Members endorsed the views of the planning consultancy as set out in the Statement of Case in respect application 15/0666 and 21/0720 as summarised in the report.

4.48 For clarity, the Statement of Case in respect of Appeal A identified relevant LDP and national policy. The case for the LPA can therefore be summarised as follows:

- The impacts of current quarrying operations (especially in terms of noise, dust and blasting) currently give rise to an unacceptable detrimental harm to the amenity and well-being of residents.
- The proposed extension and continuation of the quarry use would extend the exposure of local residents to these impacts and consequent unacceptable detrimental harm to amenity for a further 25 years, in conflict with LDP Policies CS10, AW5 and AW10.
- There are no material considerations which indicate that a decision should be made other than in accordance with the Development Plan and thus the appeal should be dismissed.

The Proposals

4.49 The application sought planning permission for an extension to the existing quarry into a previously unworked area together with the continuation of quarrying at the existing site until 2047.

- 4.50 The activity associated with the application is described in detail within the accompanying Environmental Statement (**CD1.2**). Whilst not intended specifically for this purpose, Table 12-15 on Page 230 of the Environmental Statement identifies some of the key relationships between various activities at the quarry and nearby uses, including residential and other sensitive uses. For obvious reasons, these largely reflect the relationships identified in respect of the S73 appeal at Para 4.4 above and so won't be repeated here.
- 4.51 It is a further point of agreement between the parties in the SOCG (**CD10.15**) that the application proposes new extraction activity less than 200m from existing sensitive uses (although it is a point of disagreement as to whether the 200m should be measured to the curtilage of these properties, or the property itself). Based on this measurement being taken to the curtilage (**CD10.15**), there would be eleven sensitive uses within 200m of these new extraction activities (10 dwellings and a school). I consider that this is the correct approach.

Accordance with the Development Plan

- 4.52 Section 38(6) of the Planning and Compulsory Act 2004 requires that, where regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, "the determination must be made in accordance with the plan unless material considerations indicate otherwise."
- 4.53 In this regard, and for the same reasons provided in respect of Appeal B at paras 4.6 to 4.29 above, I consider that the adverse impacts arising from existing quarry operations conflict with policies CS10, AW5 and AW10 of the LDP and, notwithstanding that there is no conflict with policies AW14 and SSA25, and that the proposal can claim support from policy CS10(1), I consider that, in overall terms, the proposal the proposal to continue these operations until 2047 as well as expand them, is not accordance with the development plan.
- 4.54 With specific regard to dust, I note that Chapter 4 (Air Quality) of the 2021 Supplementary Environmental Statement (SES) (**CD2.9**) provided an updated assessment of, amongst other matters, the impacts of dust. Whilst the Supplementary Environmental Statement correctly identified the publication in 2016 of the Institute of Air Quality Management

(IAQM) 'Guidance on the Assessment of Mineral Dust Impact for Planning' (**CD5.1**) subsequent to the preparation of the original Environmental Statement (2015), Para 4.5.1 of the SES then identifies that "the updated assessment has been undertaken for the same receptors and for the 2015 ES and as shown in Figure 4-3". The 2015 ES was based on an assessment of properties within 250m of the quarry, whereas the IAQM guidance identifies that dust effects can be experienced up to 400m away. Whilst the SES methodology in SES Appendix 4-2 (**CD2.10**) suggests a 400m threshold has been used, this is not reflected in the results presented in the SES. In order to assist in understanding the magnitude of difference between the LPA have prepared a plan (Appendix 4) which indicates in the region of 445 properties within 400m of the quarry, some 391 more than within 250m. I consider that this represents a significantly greater number of receptors, worthy of more thorough consideration within the SES.

- 4.55 At the application stage the Appellant suggested that a condition to preclude extraction within 200m of sensitive properties could be imposed. It was conclusion of the LPA at the time that this would not address their concerns. I would agree with this position on the basis that this would not address the unacceptable adverse impact upon amenity currently being experienced as a result of the existing operations at the quarry.

Other Material Considerations

- 4.56 With regard to other material considerations, and for the same reasons provided in respect of Appeal B at paras 4.30 to 4.45 above, I do not consider that the other material considerations carry sufficient weight to justify a decision that is not in accordance with the development plan. The well-being goals set out in the 2015 Act also cover the same issues, and involve balancing competing factors of economic goals and environmental and social goals, and I consider that the goal of a healthier Wales is a material consideration which supports a decision in line with the development plan. On balance, the I do not consider that the development would constitute sustainable development.
- 4.57 Furthermore, in the case of Appeal A, the proposed western extension to the quarry would result in additional sensitive uses falling within 200m of extraction operations, without clear and justifiable reasons, in conflict with the sentiments of MTAN1.

5. **SUMMARY AND CONCLUSIONS**

5.1 My evidence addresses the planning considerations relating to the LPA's case in this appeal which follows the LPA's decision to refuse two planning applications at the appeal site.

APP/L6940/A/21/3282880 – Continuation of Quarrying at the existing site (APPEAL B)

5.2 The application sought planning permission for the continuation of quarrying at the existing site to 2028 by way of the variation of conditions imposed on the extant ROMP permission (08/1380//10). The application was refused by the LPA at planning committee on 8th October 2021. On 10th February 2022 the same committee resolved to agree a series of recommendations which provided clarification on certain matters within their original decision.

5.3 The application included for the continuation of processing activity at the quarry in close proximity to a number of existing residential uses. The application plans also indicate the continuation of extraction activity less than 200m to the south of the nearest residential property on Gardener Close.

5.4 Relevant LDP policies have been identified as including CS10 (Minerals), AW5 (New Development), AW8 (Protection and Enhancement of the Natural Environment), AW10 (Environmental Protection and Public Health), AW14 (Safeguarding of Minerals), and SSA25 (Preferred Area of Known Mineral Resource).

5.5 I have undertaken a detailed assessment of the application against the identified policies.

5.6 I acknowledged that the extension of quarry operations from 2022 to 2028 would contribute towards the minimum 10 year landbank of permitted rock aggregate under Criterion (1) of LDP Policy CS10, and that there are currently no other proposals or active sites which would contribute towards this landbank. I further acknowledge that there would be conflict with the requirements of LDP Policies AW14 or SSA25 as a result of the development. Furthermore, I recognise that there is no evidence of any existing or likely future breaches of any exceedances of technical standards or guidance for quantifiable measurements of noise, blast vibration or air quality.

- 5.7 Notwithstanding the above, I consider that the cumulative impact upon amenity experienced by local residents as a result of noise, dust and blasting as detailed in the objections represent an exceedance of the threshold of an unacceptable harm to amenity as detailed in Policy AW10, and supported by Policy CS10(7) and AW5.
- 5.8 I note that the Courts have held that local objections concerning the local community's and resident's perceptions of harm can material considerations where certain tests are met. I conclude that the tests are met on this occasion.
- 5.9 I conclude that the conflicts with Policies AW10, CS10(7) and AW5 represent a conflict with the development plan when taken as a whole.
- 5.10 I have identified other material considerations as including Planning Policy Wales, MTAN1, Wellbeing of Future Generations Act, RT1, RT2 and the LDP Minerals Background Paper. the policy documents and related guidance cover issues on need and impacts that are already addressed within the policies of the LDP. Having applied those policies to the appeal proposal, I do not consider that the other material considerations carry sufficient weight to justify a decision that is not in accordance with the development plan. On balance, the I do not consider that the development would constitute sustainable development.
- 5.11 In considering the planning balance I conclude that the need for the development does not outweigh the identified harm to amenity, and consequently I consider that Appeal B should be dismissed.

APP/L6940/A/20/3265358 – Western Extension (APPEAL A)

- 5.12 The application sought planning permission for an extension to the existing quarry into a previously unworked area together with the continuation of quarrying at the existing site until 2047. The application was refused by the LPA at planning committee. On 10th February 2022 the same committee resolved to agree a series of recommendations which provided clarification on certain matters within their original decision.
- 5.13 The application includes for the continuation of processing activity at the quarry in close proximity to a number of existing residential uses. The application also proposed new

extraction activity less than 200m from existing sensitive uses.

- 5.14 Relevant LDP policies have been identified as including CS10 (Minerals), AW5 (New Development), AW8 (Protection and Enhancement of the Natural Environment), AW10 (Environmental Protection and Public Health), AW14 (Safeguarding of Minerals), and SSA25 (Preferred Area of Known Mineral Resource).
- 5.15 I have undertaken a detailed assessment of the application against the identified policies.
- 5.16 I acknowledged that the extension of quarry operations from 2022 to 2028 would contribute towards the minimum 10 year landbank of permitted rock aggregate under Criterion (1) of LDP Policy CS10, and that there are currently no other proposals or active sites which would contribute towards this landbank. I further acknowledge that there would be conflict with the requirements of LDP Policies AW14 or SSA25 as a result of the development. Furthermore, I recognise that there is no evidence of any existing or likely future breaches of any exceedances of technical standards for quantifiable measurements of noise, blast vibration or air quality.
- 5.17 Notwithstanding the above, I consider that the cumulative impact upon amenity experienced by local residents as a result of noise, dust and blasting as detailed in the objections represent an exceedance of the threshold of an unacceptable harm to amenity as detailed in Policy AW10, and supported by Policy CS10(7) and AW5.
- 5.18 I note that the Courts have held that local objections concerning the local community's and resident's perceptions of harm can material considerations where certain tests are met. I conclude that the tests are met on this occasion.
- 5.19 I conclude that the conflicts with Policies AW10, CS10(7) and AW5 represent a conflict with the development plan when taken as a whole.
- 5.20 I have identified other material considerations as including Planning Policy Wales, MTAN1, Wellbeing of Future Generations Act, RT1, RT2 and the LDP Minerals Background Paper. the policy documents and related guidance cover issues on need and impacts that are already addressed within the policies of the LDP. Having applied those

policies to the appeal proposal, I do not consider that the other material considerations carry sufficient weight to justify a decision that is not in accordance with the development plan. On balance, the I do not consider that the development would constitute sustainable development.

- 5.21 In considering the planning balance I conclude that the need for the development does not outweigh the identified harm to amenity, and consequently I consider that Appeal A should be dismissed.