LPA5.3

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

APPEAL REFS:
APP/L6940/A/20/3265358 (APPEAL A) and
APP/L6940/A/21/3282880 (APPEAL B)

CLOSING SUBMISSIONS
on behalf of
RHONDDA CYNON TAF CBC
as Local Planning Authority

INTRODUCTION, MAIN ISSUES, AND STRUCTURE OF THE SUBMISSIONS

1. This Inquiry concerns two appeals by Hanson Aggregates South Wales Ltd ("the Appellant") against decisions made by Rhondda Cynon Taf County Borough Council as Local Planning Authority ("the Council") whereby the Council (i) refused planning permission on 23 July 2020 to allow the expansion by physical extent and time duration of an existing quarrying operation at Craig yr Hesg Quarry, Berw Road, Pontypridd ("the site"), referred to as Appeal A, and (ii) refused planning permission on 8 October 2021 to allow a time extension of the existing quarrying operation at the same site, referred to as Appeal B. Whilst Appeal B started as a non-determination appeal, the Council retained dual jurisdiction and so made a decision (which was a refusal) on the appeal application.

2. Under the current main planning permission for the site, quarrying operations must come to an end on 31 December 2022 (followed by restoration and aftercare). Appeal A seeks to allow quarrying to continue until 31 December 2047 (followed by restoration and aftercare) and to expand the worked areas to include a western extension onto fields to the south of Glyncoch so as to release an additional 10 million tonnes of sandstone. Appeal B seeks to allow quarrying within the existing site to continue until 31 December 2028 (followed by restoration and aftercare). Appeal A therefore seeks to extend quarrying operations for a further 25 years and Appeal B seeks to extend them for 6 more years.

3. In the Inspector's Pre-Inquiry Meeting Note the main issues were identified (at paras 14 and 15) as:

   For Appeal B:
   "The effect that varying the conditions would have on the living conditions of neighbouring occupiers, with particular reference to noise, dust and air quality, blasting, and traffic."

   For Appeal A:
   "Whether the proposal is in accordance with the Development Plan, and if not, whether there are any material considerations that, when taken together and weighed against any disadvantages of the proposal, are sufficient to outweigh the requirement to determine planning applications in accordance with the Development Plan."

4. For the reasons rehearsed in the Council's Statement of Case (LPA1.1) in section 1, it is convenient to address Appeal B before Appeal A because the development proposed by Appeal B is subsumed within the development proposed by Appeal A but Appeal A gives rise to additional issues which do not arise under Appeal B by reason of the extended physical area and extended timescale of Appeal A. Each appeal obviously has to be decided on its own merits and so requires separate consideration but there is a

considerable amount of overlap and addressing Appeal B first minimises the degree of repetition. It is possible to envisage outcomes whereby both appeals are dismissed or both appeals are allowed or Appeal A is dismissed and Appeal B is allowed. It is hard to envisage a realistic scenario in which Appeal A is allowed and Appeal B is dismissed.

5. Strictly, notwithstanding that the application in Appeal B was made under s.73 Town & Country Planning Act 1990, it still seeks the grant of a fresh planning permission (pursuant to s.70 TCPA 1990) and so the identified main issue for Appeal A (which derives from the duty in s.38(6) Planning & Compulsory Purchase Act 2004) also arises under Appeal B. This point is made (in short form) at para 5.14.47 of Planning Policy Wales Edition 11 ("PPW") in its advice that time extensions to existing minerals sites need to be considered as new proposals and on their own merits. Compliance or non-compliance with the development plan, in this case the adopted RCT Local Development Plan of March 2011 ("the LDP"), is therefore an issue that arises for both appeals.

6. The structure of these Closing Submissions will therefore be to consider both main issues for Appeal B, dealing with impacts first and then policy implications, and then turn to the second main issue for Appeal A. It is the Council's submission that the outcome of the Inquiry should be a recommendation by the Inspector to the Welsh Ministers that both appeals are dismissed.

APPEAL B: THE EFFECTS OF VARYING THE CONDITIONS ON LIVING CONDITIONS

7. The principal condition that is sought to be 'varied' is Condition 1 of the ROMP conditions (CD10.1) which sets the end date for the winning and working of materials. The new date sought in Appeal B is 31 December 2028 (in place of 31 December 2022 as currently authorised). The 'variations' to other conditions are consequential on that extended period for working and nothing of substance turns on them.

8. Thus, the principal effect of Appeal B, so far as there are effects on the living conditions of neighbouring occupiers, is to impose all of the impacts that arise from the winning and working of minerals at the site, and the related processing activities, for a new period of 6 years from 1 January 2023 when those impacts would not otherwise be authorised and so would not be experienced by neighbouring occupiers of the site. In other words, the baseline after 31 December 2022 for considering the amenities of local residents is very different from the baseline conditions they experience today.

9. Whilst the starting point is the existing ROMP permission (the planning permission was granted in 1993 and the conditions were settled by the ROMP decision of 24 April 2013), the principle of development under that permission is only established for the period up to 31 December 2022. The existing permission does not establish the principle of development or its acceptability in planning terms for any period thereafter and the decision maker is therefore entitled and required to consider all matters afresh. That fresh consideration is in the context of a baseline of there being no winning and working of minerals at the site.

10. Mr Jenkins was therefore wrong to argue (APP12/1, para 4.6) that it was illogical for the Council to now question the acceptability of the development of the existing site, having approved the continuation of that development under the ROMP conditions in 2013. What the Council approved at that time was the continuation of that development until 31 December 2022, with the winning and working of minerals to cease at that point and the site then to be restored. That decision in no way tied the Council's hands as to how it should approach the question of extending quarrying operations into a new time period after 31 December 2022.

11. In terms of the effects on living conditions, the Council does not raise any issues in relation to traffic or air quality (i.e. any respiratory effects due to particulate matter of 10 microns (PM_{10}) or below). The Council does raise issues in relation to dust, noise, and blasting.

12. In relation to these three topics, the Council does not dispute the technical evidence relied on by the Appellant, including the monitoring data of the existing effects of the development as a result of current operations. Nor does the Council dispute that conditions can be imposed to regulate quarrying activities, including blasting, which generate noise and dust. That does not, however, mean that such conditions and such regulation would be adequate to protect the amenities of neighbouring occupiers.

13. It is the Council's case, based on the limitations of the technical evidence in terms of adequately protecting the amenities of the affected neighbouring occupiers, as shown by the empirical evidence of those occupiers of their experiences of living with the effects of those quarrying activities, that regulating the activities by conditions is not adequate to safeguard their amenities, well-being, and mental health.

14. Dealing first with the issue of dust, there is no dispute that there are no statutory requirements, standards, or limits to define what is, and what is not, a level of disamenity dust that would avoid causing nuisance or annoyance to sensitive receptors (such as the occupiers of dwellings that experience such dust). The Appellant accepts (via Ms Hawkins) that disamenity dust from hard-rock quarries can travel distances of up to 400 metres from source, albeit that most is deposited within 100 metres of source. This is confirmed by the IAQM guidance in CD5.1 (Box 2).

15. It is correct that the IAQM guidance uses the 400m distance as a screening test for undertaking an assessment of dust effects, and does not state that effects within 400m are necessarily objectionable or unacceptable. However, that does not gainsay the fact that such effects can be experienced within the 400m distance. It becomes a matter of judgment, in the absence of any standards or limits, as to what degree of effect would be acceptable (judged, as noted above, in the context of a baseline whereby there is no dust generated by minerals working at the site).

16. A substantial part of the community of Glyncoch lies within 400m of the existing working areas of the site (as shown by the plan at Figure 11-1 of the s.73 ES, CD3.1). The Appellant argues that disamenity dust effects for residents of Glyncoch are either negligible or slight/neglible (monitoring location R4 at the old people's flat at 1-12 Garth Avenue) because the monitoring data shows levels below the 'indicative threshold' of 200 micrograms per square metre per day, even at locations materially closer to the operational areas than 400m.

17. However, the 'indicative threshold' of 200mg/m2/d has no current validation as a measure of nuisance or annoyance resulting from disamenity dust: para 2.1.2 of the IAQM guidance. The IAQM guidance does not advise that such indicative thresholds should be used. It advises that a site-specific threshold should be agreed between the site operator and the local planning authority, but that has not happened in this case. In the absence of such agreement, it is a matter for judgment as to what levels of disamenity dust constitute a nuisance or annoyance.

18. As Ms Hawkins accepted, such a judgment would need to consider not merely the magnitude of effects but also the numbers of affected persons. There has been no challenge to the Council's assessment that, for Appeal A, the western extension would place some 445 dwellings (or about 1,000 people) within 400m of a dust source originating at the site (as calculated by Mr Williams). Whilst there is no equivalent quantification for Appeal B, it is apparent from Figure 11-1 of CD3.1 that at least a similar number of properties and persons (if not rather more) already live within 400m of the existing working areas (compare Figure 11-1 with Mr Williams' Appendix 4). In either case, a 1,000 or so affected persons is a sizeable population.

19. There was an implied criticism that the Council had not expressed concern about the use of the 'indicative thresholds' when scoping or reviewing the ES for Appeal B. However, unsurprisingly such work was undertaken by officers and in this instance it is clear that the officers cannot be taken to speak for the Council because Members rejected the officers' advice and

recommendations. The Council's concern derives directly from the IAQM guidance that the Appellant has professed to rely on in undertaking its dust assessment and so there can be no legitimate criticism of the Council drawing attention to that guidance and the reservations it expresses about the use of indicative thresholds.

20. Whilst it is correct that the most recent monitoring, which included two offsite locations within parts of Glyncoch, recorded levels of dust for the offsite locations below the chosen indicative threshold, if that threshold has no current provenance, this does not help inform a judgment on the acceptability of the dust effects. It can be noted that dust in those offsite locations was found to be as high or higher as dust adjacent to one of the internal perimeter tracks within the operational areas of the quarry (compare the results of monitoring rounds 13 and 14 for positions D3 and D4 with positions D7 and D8 in Table 1 of APP5/4).

21. That the impacts of disamenity dust for residents of Glyncoch are more than merely slight/neglible when judged as a matter of actual experience (rather than measured against an unvalidated 'indicative threshold') is clear from the views expressed by the residents of Glycoch both in writing and in their evidence to the Inquiry.

22. Thus, a resident of Gardner Close (off Coed y Lan) writes *"I thoroughly clean the setting daily, and every morning I wake up with thick layers of yellow dust/sand like substance on my floors, window/window frames/cars"* (Williams, App.3.1). A resident of Derwendeg Avenue (between Garth Avenue and Cefn Lane) writes *"We suffer tremendously from dust from the quarry… Our cars are covered everyday with the dust from there"* (Williams, App.3.11). A resident of Porcher Avenue (off Garth Avenue) writes *"We have always noticed a lot of dark dust on our outside windowsills, and even within the house itself, there seems always to be significantly more dust (and darker) than that of the average household. We regularly clean our windows and wipe down the outside windowsills even more frequently but this thick black dust can appear again within a matter of a day or two"* (Williams, App.3.13). A

resident of Garth Avenue writes *"Dust is also a constant nuisance"* (Williams, App.3.17).

23. Cllr Dawn Wood told the Inquiry that from speaking with the residents of Berw Road, *"the road is covered in thick stone dust, doors and windows thick with dust… the lived experience is misery."* Ms Helen Jarman, a resident of *"the top of Glyncoch"* told the Inquiry *"the dust is the greatest problem- a film of dust in the morning. You wipe it and it is back by the evening".* Vicky Howells MS read an email to the Inquiry from Ms Sian Griffiths, a local resident, which referred to *"dust on the tables, even after wiping."*

24. Ms Griffiths also addressed the Planning and Development Committee on 26 August 2021 when it was considering Appeal B and the transcript of her remarks (CD10.12) included *"Our cars, our patio tables in the summer, with the dust, you cannot enjoy living here"* (p.8), and *"your windows are constantly dirty"* (pp.9/10).

25. Whilst it may be difficult to show as a matter of scientific evidence that all of the dust is quarry dust (and Ms Hawkins noted that attempts to analyse the monitoring samples were *"inconclusive"*), it is entirely reasonable to infer that the site is a significant contributor to the disamenity dust experienced by local residents. As Ms Jarman said, *"What else is happening locally that could be causing that?... I live on the doorstep of the quarry. It is obvious. I am some distance from Berw Road where other lorries are, I live right at the top."*

visited house on site visit

26. The Appellant does not suggest that the evidence provided by local residents is not genuine or reflect their views. Since it is clearly based on their own empirical experiences of the current operations it does not need to be supported or verified by scientific evidence in order to be persuasive. Mr Jenkins accepted that it was relevant evidence (as it obviously is, relating directly to the land use effects of a physical emanation of quarrying activity). The professional judgment of Mr Williams is that the evidence from local residents is genuine and justified. It therefore fully meets the tests to be regarded as a material consideration (as set out in the West Midlands case at p.597, Williams, App.2).

27. In summary, those tests (p.597) are:

"(1) The impact of a proposed development upon the use of and activities upon neighbouring land may be a material consideration.
(2) In considering the impact, regard may be had to the use to which the neighbouring land is put.
(3) Justified public concern in the locality about emanations from land as a result of its proposed development may be a material consideration."

28. The Appellant's Note on Matters of Legal Principle (APP13/1) seeks to suggest that the West Midlands case is only concerned with the fear of crime but it is clear that Lord Justice Pill did not intend to confine his comments to the fear of crime (at 597):

"I would not distinguish for present purposes the impact of the conduct upon the use of adjoining land from the impact of, for example, polluting discharges by way of smoke or fumes... There can be no assumption that the use of land as a bail and probation hostel will not interfere with the reasonable use of adjoining land when the evidence is that it does. Fear and concern felt by occupants of neighbouring land is as real in this case as in one involving polluting discharges and as relevant to their reasonable use of the land..."

29. Undoubtedly, disamenity dust is capable of being regarded as a polluting discharge from the use of land as a quarry and it is clear that, as a matter of fact, it interferes with the reasonable use and enjoyment of adjoining land for residential purposes.

30. The Court of Appeal in the Newport case (Williams, App.1) also addressed the position where local concerns are not supported by objective or technical evidence. In that case an Inspector, when making a costs award, had stated (p.182), *"...perception of public concern without substantial supporting evidence does not amount to demonstrable harm nor is it, on its own, a sound and clear-cut reason sufficient to warrant the refusal of planning permission."*

The Court of Appeal found this to be an error of law, with Lord Justice Hutchison stating (p.183):

"I accept [counsel's] submission that the only sensible construction of the material words is that the Inspector, and, therefore, the Secretary of State who adopted his reasoning, was approaching the question of whether the council had behaved unreasonably on the basis that the genuine fears on the part of the public, unless objectively justified, could never amount to a valid ground for refusal. That was in my judgment a material error of law."

31. Of course, in neither Court of Appeal case did the Court hold that genuine public concerns would always be a material consideration and nor did it determine what weight should be given to such concerns. Both of these issues would be matters for planning judgment based on the particular facts of the individual case. Here, the concerns about dust clearly relate to an 'emanation' from the site and they clear demonstrate an impact on the reasonable use of adjacent land for residential purposes. They are, therefore, clearly material in assessing the acceptability of continued quarrying at the site. The concerns expressed are not trivial and relate to more than an occasional or infrequent occurrence. They directly impact on how residents live their lives in their immediate domestic environment, impacting on their use and enjoyment of their homes and gardens. They therefore should command considerable weight in the decision making process.

32. Turning to noise, the Appellant argues that because it can meet the noise limits set by MTAN1 there can be no basis for a noise objection. Whilst this point would have some force for a new proposal, or for a proposal that has operated successfully without generating complaints about noise, it loses much of its force in the context of an existing use which has been subject to noise limits in line with MTAN1 guidance but which has nonetheless still given rise to local residents complaining about its noise impacts. That empirical experience is an indication that the MTAN1 limits are not a sufficient protection in the circumstances of this particular case.

33. Those complaints are manifested in the written representations made by local residents and in their oral evidence to the Inquiry. The appendices to Mr Williams' proof include some examples (e.g. App.3.7, *"noise and dust pollution occur at present"*, App.3.10, *"Noise pollution. Berw Rd especially"*). Cllr Dawn Wood referred to *"constant noise and pollution"*. Vicky Howells MS referred to *"residents have suffered noise and dust. Enough is enough"*.

34. The IEMA guidance (CD6.4) notes that behavioural responses to noise, such as annoyance *"are essentially subjective and, although quantifiable, can be very sensitive to non-acoustic socio-psychological factors such as location, activity, state of well-being, familiarity with the noise, environmental expectations and attitudes to the noise makers"* (para 2.24) and that *"Equally important are those factors which control attitudes and susceptibilities; whether or not a particular source annoys may depend very much on the message it carries. Concerns about the sources of noise can influence annoyance reactions more strongly than physical noise exposure itself"* (para 2.26). Whether this should be seen as a matter of psycho-acoustics rather than acoustics is rather beside the point. What matters is how the local community reacts to audible noise from operations taking place at the site. The evidence from Mr Keith Silk amply illustrated these points when he referred to his acceptance of jack hammer noise from the site starting at 7.00am, in line with his expectations, but not the same noise starting at 6.40am, some 20 minutes early. In his case it was the perception that what was happening should not be happening that was the cause of his concern.

35. However, it is fair to note the concession made by Mr Williams that, in the light of the technical noise evidence there was no rational basis for saying there would be unacceptable effects on receptors from noise due to activities within the quarry. He clarified in re-examination that there would be audible noise for some receptors but the impacts were not in his view *"critical"*.

36. Putting that evidence into context, it is also worth recalling the point made by Mr Silk that for him as an affected local resident, *"it is not one massive thing, but one hundred and one little things, they all add up."* Thus, in isolation, it

may be that operational noise from the site (leaving aside the separate noise impacts associated with blasting) are not at unacceptable or *"critical"* levels, but on a cumulative basis with other matters, they are a part of the adverse impacts experienced by local residents in their daily lives. They are also a material consideration and, at least on a cumulative basis with the other impacts, should be given considerable weight.

37. Moving on to blasting, the Council does not dispute the monitoring results for ground vibration and that these are below the levels likely to cause material property damage. However, that same monitoring shows that the air overpressure effects of a proportion of the blasts have been in excess of the limit of 120 dB set by the ROMP condition 24. Moreover, there is an expectation that that will continue to be the case. Dr Farnfield was tempted to downplay this on the basis that 120 dB was a *"relatively low level"* but it should be noted that the ES for Appeal B provides a clear rationale for the selection of 120 dB as a control (section 10.4.2 of CD3.1): *"Overpressure may vibrate buildings, but actual damage caused by air overpressure is rare. Damage in the form of broken windows is possible but extremely unlikely below 140 dB; more frequently the perception of vibration, and consequently complaints, are highlighted by windows and loose ornaments rattling which is possible at 120 dB."*

38. The experiences of local residents clearly demonstrate that blasting activity has impacted on their amenities in a materially detrimental manner. A resident of Gardner Close writes that *"The children I currently care for get woken up from their sleep frightened not knowing what is going on around them, the whole house shakes like if the mountain is going to just crumble from underneath you. The effects from the blasts are that strong, I have photo frames fall off the wall and even my guitars in the music room"* (App.3.1). A resident living 300m from the site writes that *"Even at the current distance from the quarry, the house can shake significantly during blasting. This can be alarming"* (App.3.3). A resident of Cefn Close writes that *"there has also been problems with the house shaking when there is blasting at the quarry. This is noisy and particularly distressing for me and my daughter"* (App.3.4). A

resident of Ashford Close writes that *"my bungalow is subjected to blasts that rocks its foundations… it is frightening to experience these blasts"* (App.3.5). Another resident of Ashford Close writes that *"I was sat at home in… Ashford Close when around lunch time there was a very loud 'explosion' which rattled my radiators and violently shook the chair I was sat in"* (App.3.6). A resident on the Cefn Farm Estate writes that *"the explosions have become louder and vibrations stronger… whether we are standing or sitting at home we can feel the vibrations"* (App.3.9). A resident of Derwendeg Avenue writes that *"We already have noise pollution from the blasts that occur already"* (App.3.11). A resident of Porcher Avenue writes that *"I have heard and felt ground tremors from Craig-yr-Hesg quarry blasts for as long as I can remember. During these instances the entire house shakes, I can both hear and feel the vibrations strongly and it often genuinely almost feels like the house/ground is subsiding… It is quite worrying…"* (App.3.13). A resident of Daren Ddu Road writes that *"I have lived in the property for 10 years and during that time I have noticed tremors caused by blasting. More recently, my family, neighbours and myself have all noticed a greater intensity of the shocks caused by blasting…"* (App.3.18). Another resident of Daren Ddu Road writes that *"I have just recently experienced the effect of air over-pressure from a blast at the quarry. The sudden 'whoomph' sound was indeed frightening, accompanied as it was by noisy vibrations of my garage's up-and-over door, and my house is 550m from the present face of the quarry…"* (App.3.19).

39. Councillors and local residents speaking at the Inquiry gave similar accounts of the effects of blasting.

40. The Appellant does not challenge the genuineness of these accounts. They show that, whether or not blasts are achieving the limit of 120 dB, they are causing serious adverse impacts for the living conditions of local residents. These impacts are clearly a material consideration in the light of the evidence and should also carry considerable weight.

41. There is a narrow point as to whether the events which have exceeded 120 dB are technically in breach of ROMP condition 24 or not. A definitive view is

not necessary for this Inquiry (which is not an enforcement case) but the Council suggests that the proper meaning of the condition is perfectly clear. The design of the blasting is to achieve an outcome: that air over-pressure from *"any blast does not exceed 120 dB at any residential property"*. Condition 24 does not refer to this as something that *"should not"* happen but to something that *"does not"* happen. That is an imperative. If that outcome is not achieved there is non-compliance with the condition. In any event, the key point is that it has clearly not been possible to meet the specified limit for all blasts and that has manifested itself in blasts which have caused the degree of vibration that leads to rattling windows and shaking ornaments within what should be a peaceful domestic environment.

42. Concluding on the first main issue, it is quite clear that the effect of 'varying' Condition 1 to allow a 6 year extension to the period allowed for the winning and working of minerals at the site will have unacceptable effects on the living conditions of local residents at Glyncoch and on Berw Road by reason of the dust, noise, and blasting impacts of those activities. Given the nature of those impacts, it is not possible to remove them by adjusting the conditions in some way. The key difference between the Council and the Appellant is that the Appellant contends that the impacts caused are at acceptable levels, notwithstanding that it does not dispute or challenge what local residents say about the empirical effects of those impacts on their living conditions, whereas the Council considers that the impacts have been shown by that empirical experience not to be acceptable. Obviously, this key difference involves a planning judgment about what is acceptable in the context of residential amenity but the Council suggests that it is clear that a continuation of the current operations would be materially detrimental to the living conditions of local residents.

APPEAL B: COMPLIANCE WITH THE DEVELOPMENT PLAN

43. It is agreed that the relevant policies of the LDP that apply to Appeal B are Policies CS10, AW5, AW10, and indirectly SSA25 (because the extension

area cannot be worked without operations continuing at the existing site). Policy AW14 is not a relevant or applicable policy.

44. It is convenient to start with Policy CS10 which sets out the overarching strategy for minerals development. The first part of the policy establishes in clear terms how the LDP deals with the competing considerations of making provision to meet minerals needs and safeguarding environmental and social concerns. Effectively, Policy CS10 had three choices of approach: (i) to give priority to minerals needs above environmental/social impacts, (ii) to leave the two competing considerations to be balanced on a case by case basis, or (iii) to give priority to environmental/social protections above meeting minerals needs. It is clear from its language that Policy CS10 chose the third approach.

45. Thus, Policy CS10 sets out to *"seek"* to protect resources and to *"contribute"* to demands for continuous supply, but *"without compromising"* environmental and social issues. That is not language which gives priority to meeting needs or even language that simply calls for a balance (much as Mr Jenkins might wish that it did). It is language which, unequivocally, expects any contribution to supply to be achieved *"without compromising"* social and environmental protections. That strategic approach then informs the rest of the policy.

46. Policy CS10(1) concerns the maintenance of the 10 year landbank (for hard rock reserves) *"throughout the plan period (to 2021)."*

47. Very largely, this was almost achieved for the original plan period. On Mr Jenkins' figures there was a landbank of either 11 or 12 years at December 2019 (APP12/1, para 3.38) and permitted reserves of 6.98m tonnes at December 2020 (para 3.40). Those permitted reserves (which included the site, which could (and can) still be worked until December 2022 under its existing permission) would have provided a more than 10 year supply using the annual apportionment in RTS1 (0.69m tonnes p.a.) and just under a 10 year supply using the annual apportionment in RTS2 (0.765m tonnes p.a.), which the Council has not yet endorsed. This is not merely of historic interest because it shows that the strategy of the LDP was able to make an effective

contribution to meeting needs during its intended plan period. The Council's refusal of Appeal B has no bearing on that position because Appeal B only relates to what should happen after 31 December 2022, some 21 months after the end of the LDP plan period.

48. Of course, the LDP has not come to an end in line with its plan period and Policy CS10 remains in place at the present time. The Council accepts that there is not now a 10 year landbank in place. To that extent the minerals strategy of the LDP has not delivered the desired outcome. That means that the Council faces a challenge as it moves forward with the LDP Review with regard to the provision of an effective contribution to the landbank. However, that is primarily a forward planning issue. Whether the Council can address it via the Sub-Regional Collaboration measures outlined in PPW (para 5.14.15) and in RTS2 (Annex A) is a matter for the LDP Review process. Mr Jenkins is wrong to claim that there is no prospect of showing 'exceptional circumstances' as required by Annex A simply because 70% of the surface area of RCT comprises Pennant sandstone. Whether any resources are *"workable"* or not involves consideration of the environmental acceptability of such working as much as it involves commercial or technical considerations. If there are no environmentally acceptable sites in RCT then it would have no workable resources just as much as if there were no commercial interest in any sites.

49. However, even if it is concluded that the lack of a current landbank means that Appeal B can now claim support from Policy CS10(1), it remains necessary to address Policy CS10(6) and Policies AW5 and AW10.

50. Policy CS10(6) entails *"ensuring"* that the impacts on residential areas are *"limited to an acceptable proven safe limit"*. That policy aim cannot be achieved by Appeal B because of the unacceptable dust, noise, and blasting impacts (as outlined above).

51. Policy AW5(1) sets out the LDP's amenity expectations. It applies to all forms of development and there is nothing in the LDP to suggest that minerals

development should be held to lesser standards. Indeed, para 4.98 (supporting Policy CS10) indicates that that is not the case and that minerals development is expected to satisfy Policies AW5 and AW10.

52. Policy AW5(1)(c) requires *"no significant impact upon the amenities of neighbouring occupiers"*. Clearly, that cannot be achieved in terms of dust, noise, and blasting for Appeal B. The matters of concern clearly warrant being regarded as *"significant impacts"* for all the reasons rehearsed above and as articulated by local residents in their written and oral evidence. Policy AW5(1)(d) requires a development to be *"compatible with other uses in the locality"*. That requirement cannot be satisfied. Continued mineral extraction of the site is not compatible with the reasonable enjoyment of residential use of the dwellings in the localities of Glyncoch and Berw Road.

53. Policy AW10 precludes development that would *"cause or result in a risk of unacceptable harm to... local amenity because of... noise pollution... or any other identified risk to... local amenity [which would include dust and blasting impacts] unless it can be demonstrated that measures can be taken to overcome any significant adverse risk to.. or impact upon local amenity."*

54. Para 5.63 of the LDP identifies that *"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."*

55. No one who has read or listened to local residents' concerns about the impacts of dust, noise, and blasting on their living conditions (as summarised above) could consider that Appeal B satisfies Policy AW10. There is clearly unacceptable harm to local amenity and that harm cannot be *"overcome"* by any of the proposed conditions, controls, or other mitigation measures. The absence of objection to the technical evidence relied on by the Appellant does not mean that the amenity of the Glyncoch area or Berw Road is *"pleasant"* or *"satisfactory"* when it is impacted by dust, noise, or blasting from the site.

56. This is, therefore a case where the policies of the LDP pull in opposite directions. Appeal B can claim support from Policy CS10(1), and indirect

support from Policy SSA25, but it conflicts with Policies CS10(6), AW5, and AW10. It also conflicts with the overall approach of Policy CS10 because the contribution that it would make to aggregates supply cannot be achieved *"without compromising"* environmental and social issues.

57. Mr Jenkins argues that Policies CS10(1) and SSA25 are the *"dominant"* policies that allow Appeal B to claim LPD support in overall terms despite these policy conflicts (albeit that his primary case is that there are no such conflicts because he believes the proposals are acceptable in amenity terms). However, he is quite wrong in this regard. As already noted, Policy CS10 is very clear about where it stands on any tension between its different strands. *"Without compromising"* is about as clear as clear can be, and is explicit that the desire for a landbank is not to be achieved at the expense of environmental and social issues.

58. Policy SSA25 is only indirectly applicable to Appeal B but its contingent status as a 'Preferred Area' (subject to further evidence as to the acceptability of any proposals) as opposed to a 'Specific Site' is a clear indication that it is not intended to prevail over any conflict with Policies CS10(6), AW5 or AW10. The same message is apparent from the overarching strategy in Policy CS10 (noting that SSA25 is referenced in CS10(1) and so must be subject to that overarching strategy), the terms of para 4.98 of the LDP, and the reasoning of the LDP Inspector at his paras 12.5 and 12.8 (CD7.2).

59. Thus, in terms of the first part of the exercise required by s.38(6) PCPA 2004, the conclusion is that Appeal B is not in accordance with the LDP when its policies are viewed as a whole by reason of the conflicts with its amenity protection policies.

60. The Appellant has placed some emphasis on the fact that the Reason for Refusal for Appeal B does not identify any conflicts with the LDP. However, that is a process issue rather than a matter of substance. The Reason for Refusal is explicit about the unacceptable impacts of continued quarrying on the local community to the detriment of their amenity and well-being, especially as regards noise and dust (and in this regard it is clear from the

transcript of the Committee meeting on 26 August 2021 (CD10.12), outlining matters of concern that had been raised, that noise embraces blasting as well as other operational noise).

61. Given the plan-led system, and the duty in s.38(6) PCPA 2004, anyone reading the Reason for Refusal and the issues it raises would be driven to consider the policies of the LDP and what they had to say on those issues. Inevitably that takes you to Policies CS10, AW5 and AW10. No one reading the Reason for Refusal in conjunction with those policies could conceivably think that the Council had concluded that there was policy compliance. Nor was there. If there were to be any doubt about that, it is entirely removed by the Council's clarification of its reasoning in the decision of 10 February 2022 (CD4.7). Whilst that decision was after the event, there has been no suggestion that it does not record the genuine views of the Committee or that they have set out a position that they do not think is the case. Thus, the criticism that the Reason for Refusal does not refer to LDP conflicts goes nowhere in terms of the second main issue. It is quite clear that when the evidence relating to the matters of concern to the Council is analysed, it shows that there is non-compliance with the LDP because of the conflicts with Policies CS10, AW5, and AW10.

62. The Appellant also seeks to suggest by reference to some of Mr Williams' answers to less than precise questions in cross-examination that he was conceding that this was a case where the proposals accorded with the LDP. It will be recalled that such questions had as their originating focus Policy SSA25, which is only of indirect relevance to Appeal B. It can be noted that there was no attempt to put to Mr Williams any questions about which policy or policies were the dominant policy if they pulled in opposite directions or to engage in any real analysis of the way the LDP policies worked together. Mr Williams' written evidence had set out his considered position with great clarity (see paras 4.3, 4.6, 4.30, 4.33, and 4.34 of LPA3.1). It would be remarkable to find that, without any new information to suggest a different conclusion, Mr Williams was intentionally departing from that professional view. Of course, he was not, as he later made quite clear in re-examination.

Scoring forensic advocacy points is not a substitute for coherent analysis of the policy position. That position is quite clear: the proposals in Appeal B are not in accordance with the LDP taken as a whole.

63. Turning to other material considerations, they fall into two camps: those that march in support of a plan-led decision to refuse Appeal B and those which may be capable of *"indicating otherwise".*

64. The first matter to consider is the Well-being of Future Generations Act 2015. On balance, the Council suggests that the WBFGA 2015 supports the dismissal of Appeal B because the negative impacts of the proposal for the goal of a healthier Wales outweigh any positives achieved in terms of prosperity and (marginal) environmental gains.

65. The effect of s.2(2) Planning (Wales) Act 2015 is that the function of determining Appeal B *"must be exercised, as part of carrying out sustainable development in accordance with the Well-being of Future Generations (Wales) Act 2015, for the purpose of ensuring that the development and use of land contribute to improving the economic, social, environmental and cultural well-being of Wales."*

66. Whilst s.2(5) PWA 2015 clarifies that this duty does not change either the need to have regard to the LDP or to other material considerations and nor does it change the weight to be given to such matters, s.2(2) PWA 2015 does ensure that the central purpose of the WBFGA 2015 is required to be met when making planning decisions. Essentially, this means that achieving that purpose is a further material consideration that needs to be brought into account and given such weight as is appropriate on the facts of the case.

67. It is significant that the central purpose of the planning system for Wales is not described as merely the maintenance of the status quo, or as the avoidance or minimisation of harm. The central purpose is to use the planning system to make decisions *"for the purpose of ensuring that the development and use of land contribute to improving the economic, social, environmental and cultural well-being of Wales."*

68. That focus on seeking to make positive improvements to the various dimensions of the well-being of Wales is reflected in the Well-being Goals set out in s.4 WBFGA 2015. At least two of the Goals are explicit in seeking to achieve improvements, most notably for health, where the Goal is *"A healthier Wales… A society in which people's physical and mental well-being is maximised…"*

69. Whilst the Council does not contend that the impacts of concern will have adverse effects on the physical health of the affected communities, it does consider that the impacts of dust, noise, and blasting resulting from Appeal B will adversely affect the mental well-being of those communities. That aspect of overall health will not be achieved and mental well-being for those communities will certainly not be maximised by the continuation of quarrying at the site, perpetuating the adverse effects of dust, noise, and blasting for a further 6 years.

70. The Council notes the written evidence of Dr Buroni on the most likely causes of poor health in the existing community being socio-economic rather than environmental but the metrics used in this analysis do not address mental well-being or negative amenity impacts that would undermine mental well-being. Mr Williams also made the point that Public Health Wales did not address mental well-being but confined its consultation responses to a consideration of air quality matters. The fact that there are no breaches of air quality standards says nothing about whether disamenity dust, noise, or blasting will have adverse effects on mental well-being.

71. The Council accepts that the WBFGA 2015 is not one-dimensional and that the Goal of a healthier Wales is not the only objective that needs to be considered. In terms of approach (as opposed to outcome) the Council has no fundamental disagreement with Mr Jones, and there is clearly a need to undertake a holistic assessment, including giving appropriate weight to the benefits of safeguarding jobs (both at the site and within the wider supply chain), and (as regards Appeal A) to the limited environmental benefits resulting from some modest improvements to countryside access.

72. Mr Williams was criticised on the basis that it was alleged that his evidence as regards the WBFGA 2015 did not address these other matters. However, this is a misplaced criticism. Para 4.36 of LPA3.1 was explicit in recognising that *"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 countryside benefits were acknowledged in the SoCG for Appeal A (CD10.15, paras 9.42 and 9.43) and were not applicable to Appeal B so there was no need to rehearse this aspect in his proof. Mr Williams did therefore address all relevant matters and his clear conclusion was to share the view of the Council (Williams, para 4.36) 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."* Thus, taken as a whole, the WBFGA 2015 is a material consideration which supports a plan-led decision to dismiss Appeal B.

73. The assessment undertaken by Mr Jones suffered from the flaw that he had proceeded on the basis that the Goal of a healthier Wales was satisfied because the proposal did not cause unacceptable amenity impacts (APP11/1, paras 4.11 to 4.14). He had not attempted any assessment on the basis that that premise was not accepted. Thus, if the Council is correct that there are unacceptable amenity impacts on mental well-being as a result of dust, noise, and blasting, there is no assessment by the Appellant as to the overall effect of balancing that negative outcome against the other well-being goals.

74. Turning to national policy as a material consideration, neither PPW nor MTAN1 provides a basis for a decision on Appeal B that is not in accordance with the LDP. There are no policies in either document saying that where there is a conflict between the objective of securing a continuous supply of minerals and the objective of protecting the environment and amenities of local residents it is the latter which must yield and be compromised.

75. Even in relation to the particularly valuable (and limited) resources of High Specification Aggregates ("HSA"), PPW is clear (para 5.14.23) that *"The UK and regional need for such minerals should be accorded significant weight provided environmental impacts can be limited to acceptable levels."* The same message is apparent at para 5.14.2, which requires the mitigation of impacts to *"acceptable limits"* and to an *"acceptable standard"*. Where this cannot be achieved, a refusal is plainly justified and expected by PPW. MTAN1 contains a similar message, advising (para 6) that *"It is essential to the economic and social well being of the country that the construction industry is provided with an adequate supply of materials it needs but not to the unacceptable detriment of the environment or amenity."* Para 7 of MTAN1 is explicit that *"[the] acceptable minimum may not be possible in all instances, and where this is the case, extraction should not take place..."*

76. In substance, there was no disagreement between the parties on this fundamental approach. The disagreement was and is whether acceptable limits can be achieved or not. If the Council is correct that the empirical evidence of past operations has shown that the site cannot operate without causing undue amenity impacts for local residents (for the reasons already rehearsed) there is nothing in national policy to say that those adverse impacts simply have to be accepted by local residents or imposed upon them.

77. Thus, national policy does not provide a justification for a decision contrary to the LDP.

78. Taken together, the LDP, the WBFGA 2015, and national policy embrace the material considerations in this case. Taking all of those matters into account, the answer to the second main issue is that there no material considerations which are sufficient to outweigh the requirement to determine Appeal B in accordance with the LDP by dismissing the appeal.

APPEAL A: COMPLIANCE WITH THE DEVELOPMENT PLAN

79. The LDP policies discussed for Appeal B are also relevant and applicable to Appeal A. There are, however, two matters that need additional consideration. The first is whether the release of additional aggregates within the western extension changes the policy analysis. The second is whether the additional amenity impacts of the western extension changes the policy analysis. The Council suggests that in both cases the answer is 'no'.

80. Policy SSA 25 directly applies to the western extension and makes it a *"Preferred Area"* for mineral extraction. As per the LDP glossary and PPW this is a location where permission for mineral extraction *"might reasonably be anticipated"* but (precisely because it is a *"Preferred Area"* and not a *"Specific Site"*) it is not a location where any planning applications *"are likely to be acceptable in planning terms"* (PPW, para 5.14.19). This is not a semantic distinction but a deliberate distinction set out in PPW for the different ways in which locations for potential minerals workings can be identified at the LDP stage. The choice of seeking Preferred Area status was made by the Appellant and was endorsed by the Council and by the LDP Inspector at the plan-making stage. It made sense because at that stage various matters were outstanding, not least as regards the acceptability of the amenity impacts of the western extension which was already known to necessarily encroach into the MTAN1 200m buffer zone (as noted in the LDP Minerals Background Paper).

81. The Preferred Area status of the western extension area was expressly subject to the need at the development management stage to satisfy all relevant environmental and amenity policies (see para 4.98 of the LDP and para 12.5 of the LDP Inspector's report). Thus, SSA 25 does not provide any reason for weakening the protection given by those other policies, notably Policies CS10(6), AW5, and AW10.

82. Because the western extension brings additional areas of Glyncoch in closer proximity to the working areas of the site, there is a need to consider whether

there will be additional amenity impacts. The Council does not suggest that the amenity impacts will cover any different topics than dust, noise, and blasting but the effects will be increased by the inclusion of additional sensitive receptors who will be closer to the new areas of working that they are to the existing site. Primarily these are residential receptors (and reference has already been made to the 445 dwellings brought within 400 m of the western extension) but there are also receptors at the Cefn Primary School who will be brought within 164 m of the working areas (so far as the school grounds) and within 243 m of the working areas (so far as the school buildings), as shown by the plan in Appendix 1 of CD10.15).

83. In addition, these impacts will be experienced over a 25 year period (as opposed to a 6 year period with Appeal B) so there is a further 19 year period during which those harmful amenity impacts will arise. This is a further factor that increases the scale of harm.

84. The amenity impacts of dust, noise, and blasting have already been rehearsed in the discussion of Appeal B. The same mineral working activities are also proposed for Appeal A and it is therefore reasonable to expect the same adverse impacts on sensitive receptors. The analysis of conflict with the LDP when taken as a whole consequently also applies to Appeal A.

85. The Appellant also takes the point that the Reason for Refusal for Appeal A does not refer to any LDP conflict. This is another point of process rather than substance. The Reason refers to the fact that Appeal A involves encroachment into the MTAN1 200m buffer zone without any sufficient or clear justification. Any sensible reader of that objection would understand from MTAN1 (para 71) that *"The objective of the buffer zone is to protect land uses that are most sensitive to the impact of mineral operations by establishing a separation distance between potentially conflicting land uses. Research has indicated that people living close to mineral workings consider dust to be the main impact of mineral extraction and any processing operations, followed by traffic, and noise and vibration from blasting."*

86. Any competent planning professional, aware of the plan-led system and the duty in s.38(6) PCPA 2004, understanding the purpose served by a buffer zone and the impacts it seeks to guard against, would then take themselves to the relevant policies of the LDP to see what test they set for assessing matters such as dust, noise and vibration from blasting, in relation to an encroachment into the buffer zone. That would take the planning professional to Polices CS10(6), AW5, and AW10. Thus, whilst as a matter of process it would have been better for the Reason for Refusal to have made that connection, there can be no substantive doubt that the connection is already implicit in the issues that the Reason for Refusal does raise. That connection is then expressly confirmed by the Council decision of 10 February 2022, clarifying that its reasoning does embrace conflict with the LDP.

87. There is a narrow point on whether the encroachment into the buffer zone is limited to five sensitive properties or embraces eleven sensitive properties. There are bigger issues in this case but the Council suggests that a purposive reading of paras 70 and 71 of MTAN1 rather than an overly pedantic focus on one single word would suggest that the objective of the buffer zone is better achieved by looking at the separation of incompatible land uses rather than simply the separation of buildings from quarrying activities. Especially as regards residential amenity, the enjoyment of a dwelling is not confined to the built footprint but is expected to include its amenity space.

88. There is also a separate issue as to whether the harm arising in Appeal A could be avoided by a condition to exclude any extraction within 200m of sensitive properties (however defined). The Appellant does not put forward such a condition (other than as a last resort in APP12/1, para 10.20) due to the reduction in exploitable reserves that it would entail. The Council does not promote such a condition because it would not address (a) impacts suffered by local residents within 200m of the existing plant and processing areas (which Appeal A seeks to maintain) or (b) impacts suffered by local residents beyond the 200m point of the western extension, such as those affected by dust at upto 400 m away. The MTAN1 distance is expressed to be a

"Minimum Distance" and in this case the Council considers it would be insufficient to safeguard the amenities of local communities.

89. Thus, the Council does not consider that such a condition should be imposed or would change the analysis that Appeal A is not in accordance with the LDP taken as a whole.

90. Turning to other material considerations, they are substantially the same matters as arise for Appeal B. Whilst Appeal A makes a greater contribution to the Council's landbank, that does not warrant any more favourable response in the light of the adverse impacts, for the reasons already set out in relation to the advice in PPW and MTAN1 where mineral extraction cannot be achieved without unacceptable amenity impacts.

91. The conclusion for Appeal A is therefore the same as for Appeal B: there are no material considerations to sufficiently outweigh the conflicts with the LDP and the requirement to determine the appeal in accordance with its policies. Appeal A therefore should also be dismissed.

OVERALL CONCLUSION

92. Notwithstanding the economic benefits of providing further supplies of sandstone to support construction activity both within Wales and elsewhere in the UK (and noting that the Council has no alternative supplies currently identified for that purpose), the Council considers that the time has come to bring quarrying activities at the site to a close in line with its existing planning permission. The Council has reached this conclusion because of the effects that continued quarrying has and will have on the amenities and well-being of the affected communities closest to the site, most notably at Glyncoch but also for residents of Berw Road.

93. The Council acknowledges that in reaching this conclusion it made decisions contrary to the advice of its professional officers, both as regards Appeal A and as regards Appeal B. Indeed, it follows from the rejection of Appeal B that the Council considers that the planning controls that currently regulate

quarrying at the site are not sufficient to safeguard the amenities and well-being of the affected communities and nor are those controls capable of being adjusted so as to provide an acceptable living environment for those communities.

94. The Council also acknowledges that its position is not now based on a dispute about matters of technical evidence, such as the calculation of expected noise levels or air quality levels. The Council considers that there were some shortcomings in the technical evidence initially put forward but it accepts that supplementary technical evidence has been subsequently provided to address those matters.

95. The Council's position is based on a twin-fold stance. First, it considers that technical evidence has limitations as a sufficient measure of the impacts of the proposals on the amenities and well-being of the affected communities. Some of those limitations are recognised in the technical literature and guidance that relates to those matters. Second, the Council considers that in this case there is better empirical evidence available of the likely effects by reason of the lived experiences of the affected communities in relation to existing quarrying operations at the site. Those operations have continued under the current planning controls for the best part of a decade and it is obvious from the responses of local people that those controls have not been adequate to safeguard the amenities and well-being of the affected communities, especially as regards noise, particularly resulting from blasting activity, and as regards dust.

96. This is not a case of simply adjusting the controls to address local concerns. The fundamental issue is the unduly close juxtaposition of incompatible uses. The Quarry is too close to residential areas (and vice versa) to allow an acceptable relationship to be created for continued working, whether for the next 6 years or for the next quarter century.

97. Ultimately, the key judgments in this case concern the relative weight to be given to the competing considerations of the safeguarding of the amenities

and well-being of affected communities and the economic benefits of additional minerals supplies. The Council suggests that in any overall balancing between these considerations, it is the human factor that should prevail and local people closest to the site should not be expected to pay the price for the further extraction of minerals to meet wider societal needs. By 31 December 2022 they will have already made a more than sufficient contribution towards the costs of meeting those wider needs.

28 June 2022

MICHAEL BEDFORD QC

Cornerstone Barristers

Falcon Drive

Cardiff Bay

Cardiff

CF10 4RU