

PLANNING COMMITTEE 13TH NOVEMBER 2013

REPORT BY THE HEAD OF PLANNING AND PUBLIC PROTECTION

PLANNING APPEAL

**IMPORTATION OF INERT WASTE MATERIALS FOR RECYCLING AND USE IN
RESTORATION OF QUARRY WORKINGS**

MAES Y DROELL QUARRY, GRAIANRHYD ROAD, LLANARMON YN IAL

APPLICATION NO. 15/2011/0692/PF

1. Purpose of Report

- 1.1. The purpose of this report is to request Members' consideration of matters arising from legal and specialist highway consultant opinion on the reasons for refusal of the above application, which will be the subject of a public inquiry.
- 1.2. The report seeks a steer from Members on the Council's stance given the changes to local policy and national policy since the refusal decision in February 2013.

2. Background

- 2.1. The application was determined at Planning Committee on February 20th 2013. Planning permission was refused for three reasons. These are reproduced in Appendix 1 to the report. There were two reasons relating to highway matters and one relating to residential amenity. The Officer report to Planning Committee on the item is attached as Appendix 2.
- 2.2. Following the lodging of the appeal, The Planning Inspectorate has confirmed a start date for the appeal process (the 24th October 2013) and has advised that the appeal will be dealt with by way of a public inquiry in February 2014.
- 2.3. Since the refusal of planning permission, Members will be aware that the local planning authority has adopted its Local Development Plan (LDP) on the 4th June 2013. The LDP supersedes the Unitary Development Plan (UDP) as the Council's Development Plan, and introduces changes to local level policy in relation to proposals for waste management. The Inspector who determines the appeal will be duty bound to consider relevant policies of the development plan.
- 2.4. In the period since the refusal of permission, Officers have sought advice on the case in support of the highways reasons for refusal, and have also become aware of revisions to national waste planning policy, through a draft revised Technical Advice Note (TAN) 21, which was issued for consultation in March 2013. The final revised TAN 21 is expected to be published in winter 2013/14. The draft guidance is considered to be material to the outcome of the appeal, and will also need to be considered by the planning inspector.
- 2.5. The appeal Inspector will attach considerable weight to the policies of the LDP and more recent national policy, rather than the Unitary Development Plan (UDP) in the assessment of the proposals.
- 2.6. The above context has obliged Officers to consider the implications for the presentation of the Council's case at the inquiry.
- 2.7. Significantly, the LDP contains policies which are materially different to those of the UDP. In relation to the basic land use issues involved in the reasons for refusal, the changes in policy are not considered significant enough to warrant a fundamental change in the

Council's stance at the forthcoming inquiry. However, there are policy changes which are considered significant enough to draw to the attention of the appeal Inspector as part of the process, and these relate to the acceptability of the proposal in principle and in particular the need for the proposal. These impact upon the detailed presentation of the Council's case in opposition to the proposal, and are dealt with in the following paragraphs. Highway matters are referred to in sections 2.20 – 2.25 of the report.

Principle

- 2.8. The principle of the proposed development in this location was considered in terms of:
- The principle of importing material to assist in the restoration of the quarry; and
 - The principle of a recycling facility in this location.
- 2.9. Maes Y Droell is an operational quarry with planning permission to extract mineral until 2042. There is a restoration scheme, which was approved under permission 15/384/96 and which this proposal seeks to modify through the importation of inert material and the creation of alternative restoration profiles. Minerals Planning Guidance Note 7 (which is cancelled for aggregate, but not for other types of mineral extraction) acknowledges the use of fill material (including wastes) for quarry restoration.
- 2.10. The applicant submitted a Statement of Need in support of the proposal which set out the need for disposal of inert materials, the requirement for inert waste facilities, need for disposal capacity and the requirement for financial support for restoration. No detailed financial information has been submitted and the need for inert facilities is based upon data contained in the North Wales Regional Waste Plan (2004) and the North Wales Regional Waste Plan 1st Review (2009). The Welsh Government issued a Policy Clarification letter, CL-01-12 on the 1st of November 2012 which advises that the Collections Infrastructure and Markets Sector Plan (CIMSP)(2012) updates the position on need in relation to proposals for waste management. The CIMSP did not give clear guidance as to the spatial requirement for facilities for the management of inert waste, including inert waste disposal and this issue was discussed in the Officer's Report to Planning Committee in February 2013. The revised draft TAN provides clarity on this issue but was not published until after the decision was made with respect to this application.

Importation: Need for restoration

- 2.11. In terms of the principle of importing waste material to assist in the restoration of the quarry, this is still considered acceptable. The LDP does not contain a specific restoration policy and Minerals Planning Policy Wales (MPPW) advises that reclamation standards should be identified at the local level. What is therefore questionable is whether the level of importation proposed is necessary to achieve a *satisfactory* restoration, particularly taking into account the change in national policy (revised draft TAN 21) which seeks to ensure material is recycled where possible. Since the Officer's report was written the Welsh Government has issued a revised draft TAN 21 which states that "*landfilling inert waste is not acceptable in most circumstances and without exceptional justification planning applications for inert landfill should be refused. The restoration of quarries using inert waste may prove to be an exception and in such circumstances close working between planning authorities and NRW (Natural Resources Wales) will be necessary to achieve a satisfactory outcome.*" The end use, for grazing and wildlife, is such that the level of restoration proposed (the 'full' landform) is not considered necessary to achieve a satisfactory level of restoration. It is considered that a satisfactory level of restoration can be achieved without the level of importation proposed in the appeal scheme. No exceptional circumstances to warrant a different view have been presented by the Appellants in the view of your officers.

Achieving restoration in the event that the appeal is dismissed

- 2.12. In the event that the appeal is dismissed, restoration of the site can still be secured through the Review of Old Mineral Permissions (ROMP) process. The applicant has submitted a ROMP application which the Council is currently holding in abeyance

pending the outcome of this inquiry. There is also an approved restoration scheme under permission 15/384/96 and whilst the applicant states that some additional material would need to be imported to achieve the approved levels it is far less than that which is required under the full restoration scheme submitted under the appeal scheme. In addition, some parts of the quarry have already been reclaimed by nature, demonstrating that natural regeneration will occur without active intervention.

Importation: Need for disposal capacity

- 2.13. Policy VOE 8 of the Local Development Plan (LDP) is the local policy against which proposals for waste management outside development boundaries are assessed. Policy VOE 8 requires proposals to meet a number of detailed criteria including '*there is an unmet need identified in the Regional Waste plan or the proposal relates to the management of waste generated and to be dealt with entirely on that site*'. The Regional Waste Plan 1st Review (2009) identified that Denbighshire would have a need for 9,245 tonnes per annum, however, the Welsh Government issued a policy clarification note advising that the Collections, Infrastructure and Markets Sector Plan provides an updated position on need. The CIMs Plan states that C&D waste is not covered in detail as it is addressed in the C&D Sector Plan. In relation to residual C&D waste, the Welsh Government estimates (in the CIMs) that between 200 and 250 thousand tonnes per annum (tpa) capacity may be required for this waste stream (page 76) at an all Wales level. There is no further advice on the level of disposal required for this waste stream but crucially, the revised draft TAN 21 actively states that disposal for inert waste is not acceptable in most circumstances.
- 2.14. In 2012 just under 116,000 tonnes of waste was disposed of in inert landfills (in 2011 119,796 was disposed of) in North Wales. Since 2001 volumes of inert waste disposed of at inert landfills in North Wales have fluctuated significantly and are most likely influenced by large scale construction projects undertaken in particular years, although the volumes deposited have not exceeded 181,000tpa since 2000 (the earliest this data set goes back to). Inert waste can also be managed at non-hazardous landfills; however, there is a general requirement for such wastes as they can be used as daily cover, to construct haul roads and as part of the restoration and capping. North Wales is relatively self sufficient with regards to the disposal of inert waste in inert landfills, although there may be waste which is not recorded as originating from the region which is managed elsewhere because of the nature in which waste data is collected. At the end of 2012 there was just under 928,000 cubic metres of void remaining at permitted inert landfills, not taking into account capacity at Llanddulas landfill in Conwy or Parry's Quarry in Flintshire. Planning permission was granted in 2009 on appeal at Parry's Quarry, Alltami, which includes a 400,000 wedge for inert waste. A permit application has been submitted to Natural Resources Wales and a number of conditions discharged, although the planning permission has not been implemented to date. This would provide inert disposal capacity which is within a reasonable distance of the appeal site and which is able to cater for the local markets around Mold.
- 2.15. Given the rates of deposition observed over the last two years in relation to inert waste the level of permitted void available within North Wales is considered well in excess of the void required to enable the region to manage its own inert waste disposal for the next 10 years. In Officer's view there is currently no need for additional inert disposal capacity within the region.

Recycling

- 2.16. Policy MEW 5 of the UDP provided explicit support for the location of recycling activities for construction waste in old quarries. National policy also identifies that quarries may be suitable locations for such activities. Policy MEW 5 was not taken forward into the LDP and will therefore not be used to determine the appeal.
- 2.17. During the development of the LDP sites across the County were evaluated to determine their suitability for waste management uses which culminated in the identification of a number of named sites which would be allocated for waste management under policy VOE7. Maes Y Droell is not a named location within the policy. Policy VOE 7 also

identifies that such uses will generally be acceptable on existing industrial estates. Maes Y Droell is not an industrial estate and is located outside the development boundary. The proposal would therefore fall to be evaluated under policy VOE 8 which provides guidance for waste management outside development boundaries. The policy allows waste activities outside development subject to a number of detailed tests, including (i) *there is an unmet need identified in the Regional Waste Plan, (ii) allocated sites are either unavailable or unsuitable for the proposed activity; and iii) there are no suitable sites within the development boundary.* The North Wales Regional Waste Plan 1st Review didn't identify a need for additional construction and demolition recycling in Denbighshire, though it did identify an additional requirement for neighbouring authorities Flintshire¹ (38,810) and Conwy (81,229).

- 2.18. There is general support for recycling infrastructure in national policy, however, there is very little commentary as to where or how much infrastructure is required. The recycling element of the proposal is expected to widen the markets from which the appellant can source waste and minimises the volume of recoverable material being used to fill the quarry void. The applicant also advised that co-locating the disposal and recycling activities reduces the distance that waste has to travel. There is therefore benefit in the recycling element of the appeal scheme being located at the quarry. However, in practice, inert waste recycling facilities across North Wales are often stand alone facilities which demonstrate that it is not essential to co-locate recycling and disposal activities. Given that there are existing permitted sites and allocated sites within reasonable distance of the appeal site it is considered that the proposal does not meet the requirements of policy VOE 8 of the LDP.
- 2.19. The planning application was submitted and determined within the policy context provided by the Unitary Development Plan. Although the Collections, Infrastructure and Markets Sector Plan had been published and the Policy Clarification Note had been issued at the time the decision was made in relation to this application, the determination was made prior to the publication of the revised draft Technical Advice Note 21, which advises that landfilling inert waste is not acceptable in most circumstances. In Officers' view, these changes are of fundamental significance, and would now lead Officers to take a different line on the acceptability of the proposal. In light of these changes the proposal is considered to be contrary to policy VOE 8 of the adopted LDP and the draft revised Technical Advice Note (TAN) 21.

Highways

- 2.20. Following the adoption of the LDP, the context for consideration of highways impacts of development in open countryside is set out in Planning Policy Wales 3.1.4, which refers to what may be regarded as material considerations and that these can include the number, size, layout, design and appearance of buildings, the means of access, landscaping, service availability and the impact on the neighbourhood and on the environment. The acceptability of means of access is therefore a standard test on planning applications.
- 2.21. In relation to highway matters, permission was refused on the following grounds :

Reason for refusal 1:

In the opinion of the Local Planning Authority, the development is unacceptable on highway grounds in that the proposals would result in the generation of additional heavy goods vehicle traffic movements on an inadequate rural road network, being likely to lead to dangers for existing and proposed road users and affecting the safe and free flow of traffic, in conflict with Policies GEN 6 vii, TRA 6, and MEW 11 viii of the Denbighshire Unitary Development Plan.

¹ Since then, the planning permission at the Wire Works (Hendre) was granted planning permission and the condition which prevented the importation of aggregate for recycling at Moel Y Faen has been removed.

Reason for refusal 2:

The submitted plans do not demonstrate that a safe and satisfactory new vehicular access with adequate visibility splays can be constructed onto the highway in order to serve the development, and in the absence of such plans, the Local Planning Authority do not consider the proposals are acceptable on highway safety grounds, the existing access and approach road / junction serving the old quarry being inadequate to accommodate additional heavy goods vehicle traffic, all being likely to lead to additional dangers for existing and proposed road users, affecting the safe and free flow of traffic on the highway in the vicinity of the site, in conflict with Policies GEN 6 vi and vii, TRA 6, and MEW 11 viii of the Denbighshire Unitary Development Plan, and the guidance in Technical Advice Note 18: Transport.

- 2.22. Having regard to the above reasons, and in preparation for the appeal, the Council has sought advice from a Highways Consultant and Leading Counsel on the substance of the case in support of the specific grounds of refusal. The Summary of the Highway Consultant's assessment is included as Appendix 3.
- 2.23. In relation to reason 1, the Highway Consultant considers the highway has sufficient capacity to accommodate the proposed increase in traffic arising from the appeal scheme and there are no highway safety concerns arising from the proposal other than those relating to the access, which is the subject of reason for refusal 2. In light of this, it is recommended that reason for refusal 1 is not pursued, save in so far as it pertains to reason for refusal 2.
- 2.24. In relation to reason 2, the Highway Consultant considers the reason for refusal should be pursued, but notes that this reason for refusal might be capable of being addressed by the applicant through the submission of a revised access plan. In the event that an additional plan is submitted this will need to be given due consideration by the Council and its consultees, which will in due course inform its stance at the forthcoming inquiry.
- 2.25. To that end, very recently the Appellant has sent a revised access plan and has asked for the Council's views upon it. The Appellant has not however submitted this plan as an application drawing for determination, but rather it is intended merely to demonstrate that adequate visibility splays can be demonstrated. In the event the plan gives rise to other concerns, such as the impact upon a public right of way. Advice from Leading Counsel has been sought, and Counsel advises that in a case where access is for determination then the decision maker must have an application plan upon which to make a decision. Not to do so would be wrong in law. The original access plan has been withdrawn and therefore there is not now any access plan which is for the planning inspector. Fundamentally this is a problem for Appellant, however if an access plan is submitted for determination and is accepted by the Inspector as an access plan then the view of the Council as local highway authority will be sought. Accordingly authority is sought to undertake such consultation and for the Head of Service to amend the Council's case in the light of the views of highway officers and other internal consultees.
- 2.26. Should an access plan not be placed before the Appeal Inspector then submissions will be made that the appeal cannot lawfully be allowed. It is noted that the earlier suggestion that this is a matter which can be dealt with by way of a Grampian condition is considered to be wrong in law.
- 2.27. It is therefore considered that the advice outlined should be used to inform the case to be presented by Officers at inquiry.

Residential Amenity

- 2.28. In relation to residential amenity, planning permission was refused on the following grounds :

Reason for refusal 3

In the opinion of the local planning authority, the development would give rise to an unacceptable intensification of activity, including additional traffic and processes involved in the recycling and restoration works, being likely to have an adverse impact on the residential amenities of occupiers of properties in the vicinity of the site, by way of noise, dust, and disturbance, in conflict with Policies GEN 6 i, v and vii, TRA 6, and MEW 11 iv of the Denbighshire Unitary Development Plan.

2.29. Following the adoption of the LDP, the context for consideration of residential amenity in relation to development in open countryside is Planning Policy Wales 3.1.4, which refers to the impact on the neighbourhood and on the environment as potentially material considerations. The impact of a development on residential amenity is therefore a relevant test on planning applications. This is emphasised in Paragraph 3.1.7, which states that proposals should be considered in terms of their effect on the amenity and existing use of land and buildings in the public interest.

2.30. In terms of the approach to be taken at the Public Inquiry it is recommended that the focus of the Council's case should be on the impact of the new access on residential amenity. There are a number of residential properties along Graianrhyd Road, including one residential property, Tyn Rhos, which are likely to be adversely affected by the appeal scheme.

3. Conclusion

3.1. Officers have received advice from a highways consultant and leading Counsel on the grounds of refusal. It is not now considered there are justifiable grounds to pursue the highway reason for refusal No.1 save in so far as it pertains to reason for refusal 2, and if the applicant submits a suitable revised access plan, that might provide sufficient information not to pursue reason for refusal No. 2 at the appeal. Delegated authority to consider any such information is sought. This will of course be a matter for the Inspector to address and it is regretted that it has not been provided hitherto, which does not comprise reasonable conduct on the part of the Appellant.

3.2. Changes in local policy and national policy seriously call into question the suitability of the proposal site for the recycling element and the need for the disposal element of the proposal. It is therefore considered appropriate to now draw the appeal Inspector's attention to conflict with policy VOE 8 of the adopted Local Development Plan and emerging national planning guidance draft revised Technical Advice Note (TAN) 21: Waste, as part of the Council's case at inquiry. The introduction of new issues late in any appeal process may leave the authority open to a claim for costs, but in this instance due to the adoption of the Local Development Plan and changes to national policy and guidance since the determination of the application, the risk of an award of costs is considered limited, and the Inspector will be invited to dismiss the appeal on the basis that need has not been demonstrated.

4. Recommendation

4.1. That in light of the changes to national and local policy, the principle of a recycling facility in this location and the need for the disposal element of the proposal forms part of the Council's case in the Council's submissions to the forthcoming inquiry.

4.2. That the First reason for refusal, save insofar as it pertains to the second reason for refusal, is not pursued by the Council.

4.3. That delegated authority is given to the Head of Planning and Public Protection, and the Development Control Manager to determine whether or not the second reason for refusal is pursued by the Council, should the appellants submit any revision to the access plans. In the absence of any acceptable access details being provided the Second reason for refusal should be maintained.

- 4.4. That the third reason for refusal is pursued in particular in relation to the impact that the new access will have on the residential amenity of occupiers of properties in the vicinity of the site.
- 4.5. That the absence of need be raised as a freestanding concern upon which the appeal could properly be dismissed.
- 4.6. The views of the independent highway consultant appointed by the Council to review the case are drawn to the attention of the inquiry.

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