
Appeal Decision

Hearing Held on 16 January 2018

Site visit made on 16 January 2018

by Wendy McKay LLB Solicitor (Non-practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 March 2018

Appeal Ref: APP/U1050/W/17/3179448

Arden Quarry, Oven Hill Road, Birch Vale, Derbyshire, SK22 1BY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by P Casey Enviro against the decision of Derbyshire County Council.
- The application Ref CM1/1115/117, dated 6 January 2016, was refused by notice dated 9 January 2017.
- The development proposed is the extraction of and removal of mineral reserves.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Application for costs

1. Prior to the Hearing, an application for costs was made by P Casey Enviro against Derbyshire County Council. This application is the subject of a separate Decision.

The Appeal Proposal

2. The planning application seeks to extract some 100,000 m³ (about 180,000 tonnes) of aggregate and dimension stone within an extraction site area of 3.1ha with an overall site area of 5.071ha. The application indicated that the work would take place over a five year period from the date of the grant of permission. At the Hearing, the Appellant explained that only a three year temporary period for the minerals development is now sought. It is intended to use the existing quarry access point off Oven Hill Road and wheel cleaning facilities, car park and office.

Main Issues

3. The main issues are:
 - Whether the relevant Development Plan policies should be regarded as being out-of-date having regard to their degree of consistency with the National Planning Policy Framework?
 - Whether the proposed development is required to meet any proven need for sandstone/gritstone aggregates?
 - Whether there is a need for sandstone/gritstone building stone to be worked in this location?

- The economic and other benefits of the development including the avoidance of sterilisation of a mineral reserve and the provision of employment.
- The adverse impacts of the development including traffic generation, noise, air quality and other environmental impacts and whether these could be satisfactorily controlled by planning conditions and/or by other regulatory authorities.
- The cumulative impacts of the proposed minerals extraction and existing landfill operations. In particular, the implications for the overall scale and duration of landfilling operations at the complex and whether that would result in unacceptable adverse effects on local amenity?

The Appeal Site

4. The Statement of Common Ground (SoCG) explains that Arden Quarry and the neighbouring Birch Vale Quarry are located on the steeply rising slopes of the River Setts's southern valley side above the village of Birch Vale. The village of New Mills lies some two miles to the east and Hayfield is about a mile to the west. The quarry lies outside the Peak District National Park but within the Green Belt.
5. Arden Quarry is a partially restored quarry and a licensed landfill site. Birch Vale is an unrestored quarry site. The proposed extraction area lies principally within a permitted landfill area. The land filling is currently taking place within cells which are being progressively graded to conform to adjacent unquarried land levels, as required by a 1971 planning permission.
6. The nearest residential properties are located to the north and north-west on Morland Road, Oven Hill Road and the A6015 (New Mills/Hayfield Road). There are a number of isolated properties located to the south of the quarry complex.

The Planning History

7. There have been a number of mineral planning permissions on or in close proximity to the appeal site, four of which have included the extraction of gritstone. The current proposal lies predominantly within the permission boundary of the 1962 permission for an additional extension to quarry workings¹. Although there was no end date attached to this permission, it is agreed that it is no longer extant.
8. In 1971, planning permission was granted, subject to conditions, to refill existing quarry excavations at "Arden Quarry, Oven Hill Road, Birch Vale New Mills" with inert and innocuous industrial waste².
9. In 1997, the disposal of commercial and household waste was permitted at Arden Quarry by a submission made pursuant to condition 2 of the 1971 permission³. The operational landfill is also controlled by the Environment Agency (EA) under a permit issued in 2015⁴.

¹ Reference: NEW/1061/10

² Reference: NEM/1170/4

³ Reference: NEM/1170-4-H2430

⁴ Reference: EPR/BW14161Q

The Development Plan and other policies

10. The SoCG confirms that the Development Plan consists of the saved policies from the Derby and Derbyshire Minerals Local Plan 2000 updated 2002 (DDMLP); the saved policies from the Derby and Derbyshire Waste Local Plan 2005 (DDWLP) and the High Peak Local Plan 2016 (HPLP).
11. There is currently work ongoing on the replacement plan to the DDMLP but to date no draft policies have been published and are unlikely to be published until Summer 2018. The parties therefore agree that there are no emerging policies relevant to this appeal.
12. Turning to national policy, the Government issued the National Planning Policy Framework, "the Framework", in March 2012. It explains that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.⁵
13. The Framework, paragraph 90, identifies certain forms of development as not being inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These forms of development include mineral extraction. The SoCG confirms that the topic of Green Belt is not a matter of contention in this appeal and that neither the openness nor the character of the Green Belt would be affected. The proposal would therefore not be inappropriate in the Green Belt and would comply with the Framework in this respect.
14. The Framework policies which aim to facilitate the sustainable use of minerals are set out at section 13 of that document. Paragraph 142 states that:
"Minerals are essential to support sustainable economic growth and our quality of life. It is therefore important that there is sufficient supply of material to provide the infrastructure, buildings, energy and goods that the country needs. However, since minerals are a finite natural resource, and can only be worked where they are found, it is important to make best use of them to secure their long-term conservation."
15. The Planning Practice Guidance (PPG) sets out further national guidance on the planning for mineral extraction in plan-making and the application process. It advises that the suitability of each proposed site, whether an extension to an existing site or a new site, must be considered on its individual merits, taking into account issues such as: need for the specific mineral; economic considerations (such as being able to continue to extract the resource, retaining jobs, being able to utilise existing plant and other infrastructure); positive and negative environmental impacts (including the feasibility of a strategic approach to restoration), and the cumulative impact of proposals in an area⁶.

⁵ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

⁶ Paragraph: 010 Reference ID: 27-010-20140306

Reasons

Whether the Development Plan policies should be regarded as being out of date?

16. The parties to this appeal do not dissent from the position that the starting point is s.38(6) of the Planning and Compulsory Purchase Act 2004 and s.70(2) of the Town and Country Planning Act 1990 (as amended). The decision should be made in accordance with the Development Plan unless material considerations indicate otherwise.
17. The first matter that falls to be considered is whether the second bullet point of paragraph 14 of the Framework is engaged. In relation to decision-making this states: *"where the development plan is absent, silent or relevant policies are out of date, granting permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted."*
18. The Development Plan is neither absent nor is it silent in relation to the type of development the subject of this appeal. However, the Appellant submits that the Development Plan is out-of-date and the policies which do not accord with the Framework and the PPG should not be relied upon or afforded even minimum weight.
19. The Framework explains what the phrase *"out-of-date"* means in the context of that guidance. Paragraph 211 states that policies in the Local Plan should not be considered out-of-date simply because they were adopted prior to its publication. Paragraph 215 explains further that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework and the closer the policies in the plan to the policies in the Framework, the greater weight that may be given.
20. In considering the question of whether a particular policy of the relevant development plan is or is not consistent with the Framework, it is necessary to have regard to the specific terms of that policy and of the corresponding parts of the Framework and to read both in their full context.
21. The Council's first reason for refusal asserts that the application has not demonstrated a *"proven need"* for sandstone/gritstone aggregates *"as required"* by the Framework and PPG and makes reference to DDMLP Policies MP19 and MP23. Both policies require an assessment of need for the proposed mineral working as a first test that must be met and then relate this to further tests of environmental acceptability.
22. The Council's second reason for refusal states that the application has not demonstrated a need for sandstone/gritstone building stone working *"as required"* by the Framework and the PPG, as well as DDMLP Policy MP34. The latter policy similarly provides that the extraction of building stone will be permitted provided that there is a need for a mineral of a specific character to be worked in that location and the scale of the proposal is such that its impact on the environment is kept to an acceptable minimum.
23. The Appellant submits that at no time in the Framework or the PPG does the aspect of *"proven need"* for aggregates arise. Likewise, it does not identify a *"need"* as being a required element for the provision of building stone. It gives

clear support to small-scale schemes for extraction of building stone at or close to relic quarries, such as this.

24. Furthermore, the Framework, paragraph 144, advises the decision-maker to ensure: *"...that there are no unacceptable adverse impacts on the natural and historic environment, human health or aviation safety and take into account the cumulative effect of multiple impacts."* The PPG includes within the criteria for assessing the suitability of each site *"positive and negative environmental impacts."*⁷ However, there is no requirement to demonstrate *"significant net environmental benefits"*. The Appellant therefore contends that the whole premise upon which the Council's policies are based is out-of-date.
25. At the Hearing, the Council drew support from other more recently adopted local plans which post-date the Framework where need remains a criterion in the assessment of minerals development such as the Cumbria Minerals and Waste Local Plan. However, the Council fairly acknowledged that the corresponding policy for assessing minerals development in that local plan includes 'need' but only as one of a number of factors to be taken into account in the same way as the PPG.
26. The Framework, paragraph 144, sets out factors to which local planning authorities should have regard when determining planning applications for minerals development including giving great weight to the benefits of mineral extraction. For building stone, local planning authorities are required to: *"consider how to meet any demand for small-scale extraction of building stone at, or close to relic quarries needed for the repair of heritage assets, taking account of the need to protect designated sites; and recognise the small-scale nature and impact of building and roofing stone quarries reflecting the intermittent or low rate of working at many sites."* However, there is no overriding requirement for a need for the mineral in question to be demonstrated. Indeed, the Council's committee report acknowledges that the Framework does not explicitly refer to 'need' in relation to minerals.
27. Likewise, the PPG does not set out an initial hurdle in the form of a presumption of need for the mineral in question. It advises that there is no maximum landbank level and each application for minerals extraction must be considered on its own merits regardless of the length of the landbank⁸. As indicated above, the question of need is only one of a number of factors to be taken into account when considering the suitability of a site on its individual merits and it is not definitive.
28. In my opinion, neither the Framework nor the PPG place the same emphasis upon the question of need as the relevant Development Plan policies. I disagree with the Council that the clear presumption set out in Policies MP19 and MP23 against proposals for the extraction of aggregates is balanced by equally clear categories of exception which are substantially in accordance with the Framework's presumption in favour of sustainable development. In reaching that view, I have had regard to the Framework policies taken as a whole and the overall approach to sustainability set out therein.
29. I conclude that the relevant saved Development Plan policies are inconsistent with the Framework and therefore out-of-date. This appeal therefore falls to

⁷ Paragraph: 010 Reference ID: 27-010-20140306

⁸ Paragraph 084 Reference ID: 27-084-20140306

be assessed in accordance with the second bullet point of paragraph 14 of the Framework.

Whether the proposed development is required to meet any proven need for sandstone/gritstone aggregates?

30. The SoCG indicates that the parties are in disagreement as to whether need is an issue and the value of the documentation that the Appellant has provided as supporting evidence in relation to need.
31. The Council contends that the proposed development is not required to meet any 'proven need' for sandstone/gritstone aggregate, as required by saved Local Plan Policies MP19 and MP23. That aspect of those policies applies to new sites as opposed to extending or amending the boundary of an existing operation.
32. The Appellant is critical of the Council's application of policy in that it has dealt with the site as both a "*new site*" and an "*extension to a site*" in its various reasons for refusal. In terms of compliance with Policy MP19, the Appellant points out that in utilising 'proven need' in the first reason for refusal, the Council has classed the site as a new site rather than as an extension to an established mineral working site under Policy MP18. In contrast, reason for refusal 3 would only be applicable to extensions of existing operations.
33. The Council explains that it considered the application to be for a new site as it regards an existing site as being "*a site with a current/implementable planning permission for the winning/working of minerals.*" Given the historic background of this former minerals site, the Council has considered the application against Development Plan policies both as a new site and as an extension.
34. Although this is clearly not a green field site, there is no extant planning permission for the extraction of minerals, nor are there any "*existing operations*", as mineral extraction ceased some year ago and it is not allocated for further development. Given those particular circumstances, I believe that the proposal is most appropriately considered as being for a new site and Policy MP19 is applicable.
35. The 'Supporting Planning Statement' which accompanied the planning application assumed that about 60% of the material extracted would be for the aggregates market. That would mean about 108,000 tonnes going into the aggregates market over the proposed temporary period. The Council calculates that this would equate to an average output which is more than double the annual output of the only quarry currently producing a significant amount of sandstone/gritstone aggregate in the High Peak area. It therefore questions the need for the operation.
36. The Supporting Planning Statement also assumed that the South East Manchester Multi Modal Strategy (SEMMS) scheme which had a planned completion date of 2017 would take some 54,000 tonnes per year over two years thereby using the 108,000 tonnes of aggregates that the Appellant estimated would be extracted.
37. The Council accepts that had the proposal been scheduled to coincide with a particular need for aggregate for a large project such as SEMMS, then it might have been possible to associate such tonnage with meeting an identified need.

However, that project is now largely complete and there is no evidence of any real demand for the SEMMS project from the Arden application site. Given the progress to date of that project and anticipated completion date, I concur with that view.

38. The Appellant asserts that the “*need*” for the aggregate mineral has been identified and it would not have applied for planning permission had it not been confident of marketing the material. It has submitted a number of letters in support of this appeal from operators in the construction industry. A Manchester based construction company has expressed an interest in carrying out the mineral extraction at the site.
39. The Council acknowledges that the Appellant has provided evidence of demand for aggregate in the form of the letters from that construction company seeking to supply contracts in the areas of Glossop, Stockport and Tameside that would “*require significant quantities of aggregate.*” However, it submits that these letters merely demonstrate an unquantified anticipated demand as at the date they were written and it is very unlikely that the proposed tonnages could be successfully marketed over the temporary period of the development.
40. The Council’s committee report accepts that some general need for sandstone aggregates will always exist, although it suggests that demand is unlikely to be high. I consider that the Appellant’s letters submitted in support provide some evidence of an ongoing market demand for aggregates in the area which the site could usefully meet. However, as noted by the Council’s committee report, they do not give any indication of tonnages that might be needed nor do they reveal any shortage in the current supply.
41. In terms of compliance with the DDMLP, I do not consider that the Appellant has presented sufficient evidence to show that there would be a “*proven need*” for aggregates which would not otherwise be met and, in that respect, the proposal would conflict with Policies MP19 and MP23. That is a factor to weigh in the overall balance of considerations, albeit in the light of my finding that these policies are now out of date. However, given their high degree of inconsistency with the Framework, I attribute little weight to the conflict with these policies.

Whether there is a need for sandstone/gritstone building stone to be worked in this location?

42. The relevant DDMLP Policy MP34 states that proposals for the extraction of rock for use as building stone will be permitted provided there is a ‘need’ for mineral of a specific character to be worked in that location and the scale of the proposal is such that its impact on the environment can be kept to an acceptable minimum.
43. The Appellant’s Supporting Planning Statement indicates that about 40% of the stone extracted would be produced as building stone which would equate to some 72,000 tonnes over the period of the temporary permission. The Council submits that set against the available national and local background information, the proposed extraction and sale of that quantity of building stone per year from Arden seems unrealistic and disproportionate to normal levels of demand.

44. The Appellant's evidence highlights the new housing proposed in the area of the quarry and the location of the site as being within proximity to a significant number of listed buildings and conservation areas. The site would be well-positioned provide a supply of local building stone for renovating, house building and conservation areas.
45. The Appellant has provided a letter dated 26 March 2015 from a local building company who undertake both new build and renovation and restoration work. They state: *"We are aware of this demand for local stone due to our previous 15 years of trying to source natural local stone for our own construction jobs."* It continues: *"Any local stone will reduce the price of stone for the local area and hopefully start to satisfy the huge demand that cannot be even closely met. We would be looking to purchase upwards of 200 ton per week."*
46. The Council expresses doubt that a single local builder/stone merchant could sustain a demand in excess of 10,000 tonnes per year given that this level of demand is usually attributable to a supplier to the national market. It contends that the Appellant has not demonstrated that there is a substantial unfulfilled need for this stone and submits that it is unlikely that production rates of 14,400 tonnes per year would be needed.
47. Although the background to Policy MP34 indicates that the extraction of sandstone for use as building stone has historically been on a small-scale, it acknowledges that the market for the mineral can fluctuate greatly making future demand difficult to predict. It also identifies, as an important aspect of demand, the fact that natural stone is sometimes required as a building material to help conserve the built environment when building projects are proposed in sensitive areas.
48. In my view, the evidence submitted by the Appellant reveals a current demand for locally produced building stone. The supporting letter from the local building company quantifies the level of product that they believe they could deal with. This company currently imports building material from Yorkshire and Matlock. Since transportation costs add greatly to the expense, they are very keen to source local stone. The provision of locally sourced building stone to meet local demand would be consistent with the sustainability objectives of the Framework.
49. In terms of compliance with the DDMLP, I consider that the Appellant has presented sufficient evidence of 'need' for building stone in this location and in that respect the proposal would be in accordance with Policy MP34. In any event, even if I had found any conflict with this policy, that is a factor to which little weight could be attributed in the light of its inconsistency with the Framework.

The economic and other benefits of the development

The prevention of sterilisation of a mineral resource

50. The Framework, paragraph 142, states that: *"... since minerals are a finite natural resource and can only be worked where they are found, it is important to make best use of them to secure their long-term conservation."*
51. The Appellant asserts that the scheme would result in the prior extraction of a known reserve before landfilling and the reduction in mineral sterilisation.

Furthermore, the extraction would be from an already despoiled landscape and previous mineral extraction site which lies outside a National Park.

52. The Council's committee report recognises that the sterilisation of the mineral referred to in the application would be brought about by the current permitted landfilling operations. The appeal proposal would avoid the sterilisation of up to 180,000 tonnes of mineral.
53. I concur with the Council that in considering the significance of this sterilisation, the need for the particular mineral resource that would be sterilised should be taken into account. Furthermore, the expiration of any mineral permission must inevitably result in some form of sterilisation of a mineral resource. Nevertheless, the proposed development would ensure the prudent and best use of a natural resource. This is an environmental benefit to which modest weight can be attributed.

The extraction of mineral on site for use in the landfill lining without recourse to import (shale)

54. The Appellant asserts that the extraction would enable improvements in engineering operations in waste cell construction. The removal of gritstone would allow access to be gained to the underlying shale material which has been used to engineer the landfill forming a geological barrier in line with the EA permit thereby avoiding the import of these materials.
55. The Appellant provided additional information to the LPA in its letter from the Ardley Consulting Company Ltd: *"The existing quarry has a series of near vertical faces some of which are inside the planning/permit boundary and some outside. There is some evidence of minor instability of these faces and as part of the proposed quarrying PCE (p Casey Enviro) will reduce face gradients in order to improve the long term stability of these areas. In order to achieve this it will be necessary to excavate in an easterly direction, beyond the existing planning and environmental permit boundary as illustrated on the drawings included with the application."*
56. The Appellant explains that the shale within the quarry is used as a liner material to form a geological barrier. This is a requirement of the EA permit for the landfill operation. The rock needs to be excavated to allow access to the shale for liner and to ensure that suitable gradients are formed within the quarry to construct the landfill. Before the on-site shale liner was used, the material had to be imported from Buxton tarmac plants with a very high carbon footprint. Further details regarding the process and the required works for waste cell construction were provided at the Hearing by the Appellant's landfill site manager.
57. In the light of the Appellant's evidence on this topic, I am satisfied that the scheme would facilitate improvements in the waste cell construction in accordance with the EA permit. The extraction of shale for the purpose of being used to form the liner of the landfill cells in the Arden Landfill site would provide a benefit for that operation. There would be obvious sustainability benefits in utilising material derived on-site for that purpose, as opposed to transporting it from elsewhere to the site. This is a factor to which moderate weight can be attributed.

The economic benefits including the provision of employment

58. The Framework sets out the importance of sustainable economic development to deliver a strong and competitive economy and recognises the benefits of mineral extraction to the economy.
59. The Appellant indicates that the development would lead to the creation of four to five full-time jobs for the duration of the development. It submits that the proposed extraction would provide an economic benefit by its direct and indirect employment of quarry operatives, contractors and drivers.
60. Since the Council casts doubt upon the viability of the production levels, it queries whether the development would sustain that number of jobs for the duration of the permission. It also questions whether the quarrying would be done by the Appellant or another company using its own workforce. Nonetheless, there are economic factors in favour of both extricating the mineral from a previously quarried site and for facilitating the creation of the landfill cells in the manner proposed.
61. Local residents suggest that the development would have a negative effect on the local economy and job creation, particularly in relation to tourism. However, as recognised by the Council's committee report, positive and negative effects on other jobs and the local economy are difficult to evaluate. The evidence before me does not support the view that any such adverse impacts would be material.
62. I conclude that there would be some overall economic benefits generated by the scheme, including the provision of employment, but this is a factor to which only modest weight can be attributed.

The adverse impacts of the development

Traffic generation and highway safety

63. The SoCG explains that during the determination of the application the Appellant proposed a planning condition in order to overcome the traffic-related concerns of the Highway Authority. The Derbyshire County Council Highways Development Control in their final consultation response indicated that: *"If conditions can be imposed restricting total HGV activity for the entire site to a maximum of 12 no. vehicles per hour, i.e. for both the infill and extraction operations together and in line with current trip generations for infill alone, its unlikely that any objection on highway grounds could be sustained. The keeping of records as suggested would appear to be a reasonable method of monitoring activity."*
64. The Council's committee report stated that: *"Following receipt of a statement from the applicant's agent that the applicant would accept a condition limiting all HGV traffic to and from the site, for both mineral extraction and landfill operations, to present levels, the Highway Authority's objection was withdrawn, subject to a viable condition being imposed."*
65. At the Hearing, the parties discussed the most appropriate means of imposing and monitoring a cap on total traffic movements to and from the whole site. The Council confirmed that the Highway Authority would accept a cap on the total daily traffic movements, as opposed to an hourly rate, to allow some flexibility for the operation. The parties have subsequently agreed a format for

a workable and enforceable condition and this has been submitted for my consideration. The overall aim remains the same which is to avoid any material increase in the overall level of traffic movements being generated as a result of the permitted extraction activity. Given the scope for traffic movements to be controlled in this way, I do not consider that there would be any material harm to highway safety and associated traffic impacts resulting from the scheme.

Noise and disturbance

66. A noise survey and assessment was submitted as part of the planning application. The SoCG indicates that the parties agree that the assessment complied with best practice and guidance set out in the Framework. It calculated potential impacts based upon a worst case scenario.
67. In accordance with best practice, the noise survey and assessment was based upon measurements taken at the nearest properties on Morland Road. However, the committee report states that: *"Therefore, I am mindful of the comments of local people in relation to their experience of the noise effects of previous quarrying activity at the site and the ability of noise from quarry plant to project across the valley. Taking this into account, I would expect any permission for the re-commencement of quarrying at the site to be subject to conditions including requirements for a comprehensive noise monitoring and mitigation scheme."*
68. At the Hearing, the Council confirmed that, subject to the imposition of appropriate planning conditions, no objection was raised as a matter of principle in relation to the issue of noise. The parties have agreed suitably worded planning conditions designed to limit noise levels at a specific receptor, namely, the gateway 180m south east of Moorland Cottage on Morland Road. However, they disagree as to the appropriate wording of a condition to secure the approval and implementation of a general noise and dust mitigation scheme.
69. Although the nearest residential properties are on Morland Road, the topography of the land is such that they are shielded to some extent from the proposed extraction area. I therefore believe that, in addition to the imposition of a specific noise limit condition at Morland Road, it would be necessary and reasonable to impose a condition to secure the approval and implementation of a noise mitigation scheme to safeguard the interests of both those and other residents in the vicinity.
70. As regards the particular wording of an appropriate condition, I agree with the Council that the contingency measures should specifically include a monitoring requirement. Furthermore, the results of that monitoring should be made available to the Mineral Planning Authority. I do not believe that to do so would place any onerous or unreasonable burden upon the Appellant.
71. Given the potential, in the light of their historic experience of mineral extraction at the site, for noise to affect residents other than those living on Morland Road, I consider that the triggers for the contingency measures should be as set out in the Appellant's preferred version of condition 18 rather than the Council's latest version 2A of draft condition 18. That is to say, the contingency measures are to be employed *"...in the event that the emission of noise and dust from the development gives rise to any demonstrable adverse*

impact on lawful uses of surrounding land and property.” That also reflects the wording of the relevant part of condition 10 of the permission⁹ for green composting to which my attention was drawn at the Hearing.

72. The Council’s latest version 2A of condition 18 also makes provision for the suspension of operations in certain specified circumstances until effective mitigation measures are implemented. To provide greater operational flexibility, I consider that such matters should be agreed as part of the overall scheme which should also provide for a timetable for the implementation of any remedial action. That should enable effective enforcement of the agreed scheme but still remain a reasonable condition in all other respects.
73. I conclude that, subject to the imposition of appropriate planning conditions, any unavoidable noise emissions would be satisfactorily controlled and mitigated and would comply with appropriate noise limits for extraction in proximity to noise sensitive properties.

Air quality and dust assessment

74. The Appellant’s technical assessment prepared by CK Environmental considered the potential impacts on sensitive receptors from mineral extraction within the quarry, as well as the transport of material from the site. The main sources of particulates and dust from the proposed activities were identified as being loading and tipping, stone extraction, screening, crushing, traffic both on and off the site, stock piles and bare surfaces.
75. The report concluded that the proposed operations would not cause an exceedance of any air quality objectives and would not therefore have any impact upon health in the local area. All receptors were classed as having a negligible impact from dust soiling. However, it was recognised that effective mitigation measures were required given the presence of the roadside terraced cottages within 500m of the proposed site entrance and the potential risk of adverse impacts from vehicle dust trackout. It was concluded that the implementation of the proposed dust control techniques should adequately control the likelihood of annoyance from potential dust soiling activities.
76. The SoCG confirms that the parties agree that the issue of air quality and dust does not constitute a ground for refusal. However, any permission granted should be suitably conditioned based on the mitigation measures as detailed within the consultant’s report.
77. I conclude that, subject to the imposition of appropriate planning conditions, the scheme would ensure that any unavoidable dust and particle emissions are satisfactorily controlled and mitigated at source and would not result in any unacceptable adverse impacts upon human health.

Visual impact

78. The SoCG confirms that the parties agree that visual impact is not a matter of contention in this appeal. The Council does not consider that the development would warrant the imposition of any planning conditions in relation to visual impact in the event that planning permission is granted for the scheme. I concur with that approach.

⁹ Ref: CW1/0514/23

Peregrines

79. The SoCG records a difference of opinion in respect of the potential impact upon a protected species, namely, peregrines.
80. The Appellant commissioned a further peregrine survey dated May 2017 which concluded: *"Unfortunately, no sign of Peregrine presence was noticed during 4 visits in March, April and May 2017 (Optimum breeding season). This would suggest that the pair are no longer nesting in the area and may well have perished."*
81. The parties remain in disagreement as regards the presence of peregrines on the site. However, they agree that the issue of peregrines does not warrant refusal of permission as, should peregrines be on the site, the development could be acceptably conditioned. This was confirmed at the Hearing and a suitably worded condition has subsequently been agreed.
82. I note that Natural England raised no objection to the application. The parties also agree that the nearby Dark Peak SSSI does not represent a constraint in determining this appeal. I conclude that the proposal would not result in any material harm to protected species and the natural environment.

Hydrology and Hydrogeology

83. The initial objection of the EA has been withdrawn following the submission by the Appellant of additional geological and hydrogeological information. The SoCG confirms that the parties agree that the proposal complies with the Framework in relation to hydrology and that hydrogeology is not a matter of contention in this appeal. That accords with my own view on this topic.

The cumulative impacts of the minerals extraction and landfill operations

84. The Council's fourth reason for refusal asserts, amongst other things, that there is no need for the additional landfill capacity that would be created by the additional quarry void that would be formed by the proposed development, as required by national and local planning policies, and the infilling of that void would add to the overall scale and duration of landfill operations at the complex and thereby have unacceptable adverse impacts upon local amenity.
85. The Council raises concerns in relation to the additional landfill capacity within the site which would be available as a result of the space created by that mineral development. It draws support in that respect from DDWLP Policies W1b and W11 which require a demonstration of need for additional landfill capacity.
86. The parties disagree as to whether the landfill permission would allow infilling of whatever void exists within its boundary or whether a new landfill permission would be required to utilise that space for the waste operation. The Appellant submits that most of the landfilling would be encompassed within the 1971 permission, except for an area of about 0.5ha. In contrast, the Council's position is that the 1971 landfill permission relates only to the void created by the now expired 1962 permission and a new planning permission would be required to infill any additional void space subsequently created.
87. Whether or not a new planning permission is subsequently required to infill the additional void space, the appeal before me is for the extraction and removal of

minerals. No new landfill permission is sought as part of the scheme that would fall to be assessed against the DDWLP policies. The requirement of the DDWLP policies for need to be demonstrated is not therefore directly applicable to the current application. Furthermore, the Appellant has calculated that if the void was taken as a new void, then it would add only 5% to overall void capacity. In the context of this particular site and scheme, the need for new landfill capacity is a factor to which I attach little weight.

88. As regards the potential cumulative impact upon local amenity, the Appellant points out that the EA had no objection to the application and the Council's Environmental Health Officer made no comment on it. For HGV traffic, the aim is for total traffic movements for the whole site to remain the same for the duration of the permission. The proposed HGV numbers could accommodate both the export of mineral and the import of waste. Since the total number of vehicle movements for both the landfill and quarrying operation would be restricted by planning condition, there should be no cumulative impact consequences that flow from traffic generation.
89. At the Hearing, local residents complained that they frequently experience dreadful smells and other amenity impacts as a result of the current landfill operation. Whilst the concerns of local residents in this respect directly relate to the present landfill operation, rather than the proposed mineral extraction, that development would have the side effect of creating a larger void with the potential to extend the operational life of the landfill site.
90. Although the Appellant indicated at the Hearing that the intention is now to remove a lesser amount of material over a shorter period of time, it is the scope of the original application that is before me for consideration in this appeal. The Appellant expects, based on current rates of infill applied consistently going forwards, that the landfill operation would be complete by about 2043. It is anticipated that the increase in void capacity, using an average of the last 3 years input, could add some 1.6 years to the life of the landfill site.
91. In contrast, the Council's committee report calculates that the increased capacity would extend the life of the landfill site for up to 2 years at current infilling rates and perhaps more as infilling rates decline. At the Hearing, the Council reiterated the view that the landfilling rate would be likely to continue to reduce as more recycling took place and the additional void that would be created would add about 2 years to the life of the landfill site.
92. The operation of the current landfill activity is subject to control by planning conditions and the EA permit and any additional landfill operation over and above what is permitted by the 1971 permission would need to be the subject of a new permission/consent. The Framework, paragraph 122, requires local planning authorities to assume that where emissions are subject to approval under pollution control regimes that these regimes will operate effectively.
93. I conclude that whilst the scheme would not add significantly to the available landfill capacity, the increased void would have the potential to prolong the life of the landfill operation. However, that increase would be for a relatively short period in comparison to the overall duration of the operation, even adopting the Council's 'worst case scenario'. Given the scope to control the landfill operation by planning conditions and other regulatory controls, the balance of

the evidence does not support the view that unacceptable adverse impacts on local amenity would result.

Overall conclusions

94. The development would be in accordance with DDMLP Policy MP34 but there would be conflict with the requirement to show a “proven need” for aggregates in DDMLP Policies MP19 and MP23. However, as indicated above, there are other material considerations, including the Framework which must be taken into account. In the light of the high degree of inconsistency of those policies with the Framework I attribute little weight to any conflict with them.
95. Since I conclude that the relevant Development Plan policies are out of date, it is necessary to consider whether any adverse impacts of granting permission for the scheme would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
96. I have considered the benefits of the scheme including the prevention of sterilisation of a mineral resource, the extraction of mineral on site for use in the landfill lining without recourse to import and economic benefits. I conclude that there would be some benefits arising from the development to which weight can be attributed, as indicated above under the detailed consideration of those matters.
97. The adverse impacts of the proposal including traffic generation and highway safety, noise and disturbance, air quality and dust, visual impact, hydrology and hydrogeology and the impact upon a protected species have also been considered. I conclude that these could all be satisfactorily controlled by planning conditions and other regulatory bodies and no unacceptable adverse impacts would result. Likewise, the scheme would have the side effect of prolonging the life of the landfill but that would be for a relatively short period. The landfill activity would itself be subject to various controls and no unacceptable adverse impacts upon local amenity would result.
98. Taking all these various considerations into account, I conclude that the adverse impacts of granting permission for the scheme for the temporary period sought would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Planning conditions

99. At the Hearing, the parties discussed planning conditions that might be imposed in the event of my allowing this appeal and granting planning permission. Following that discussion, the parties submitted an amended list of planning conditions with the exception of the noise condition 18 for which two alternatives were provided. In addition, the Council has submitted a further revision of its alternative condition 18 – version 2A. A subsequent amendment agreed by the parties was submitted in respect of condition 23 – breeding birds.
100. I have considered all these conditions in the light of the guidance in paragraphs 203 to 206 of the Framework. I believe that the suggested conditions should be imposed for the reasons set out in the agreed list and the latest revision to condition 23 should be adopted. However, I have amended the wording of condition 18 for the reasons set out above.

101. As regards proposed condition 5 which excludes the application of the Town and Country Planning (General Permitted Development) (England) Order 2015, I believe that, exceptionally, it is necessary to impose such a condition to reflect the temporary nature of the permission and the basis upon which the application was made. The condition as drafted includes a 'tailpiece'. Whilst such wording should be used with care, in this instance its inclusion is reasonable to allow some flexibility in relation to minor variations.

Formal Conclusions

102. For the reasons given above, I conclude that the appeal should be allowed.

Formal Decision

103. The appeal is allowed and planning permission is granted for the extraction of and removal of mineral reserves at Arden Quarry, Oven Hill Road, Birch Vale, Derbyshire, SK22 1BY in accordance with the terms of the application, Ref CM1/1115/117, dated 6 January 2016, and the plans submitted with it, subject to the following conditions:

- 1) The development hereby permitted shall begin no later than 3 years from the date of this decision. A minimum of 14 days prior to commencement, written notification of the date of commencement shall be sent to the Mineral Planning Authority.
- 2) The winning and working of minerals shall be completed no later than three years from the date that the winning and working is begun.
- 3) Except as may be required by the other conditions to this permission, the development hereby permitted shall be carried out in accordance with the details set out in the application for planning permission and the accompanying documentation registered as valid on 11 January 2016, except as amended by the further submission of documents as set out below. The key documents are set out below:

Arden Location Drawing Number: PO961/LOCPLAN17.12.15/003

Route of Rock Extraction Drawing Number
PO961/ROCKCUT/22.10.15.007

Sections through proposed rock cut Drawing Number
PO961/D/SEC/ROCK B – 1/25.02.16.005

Bore Hole Locations – Drawing Number P0961/D/BH/26.02.16.001

Arden Access – Drawing Number P0961/LOCPLAN 22.10.15/003

Application form dated 7 January 2016

Supporting Statement dated November 2015

Arley Consulting Company Limited dated 26 February 2016 (submitted 26.02.16)

Peregrine Falcon Nesting Survey – EBS dated 20 March 2016
(submitted 23.03.16)

- 4) From the date that any of the operations authorised under the permission are commenced, a copy of the permission, including all the documents

referred to in it, and any submissions approved by the Mineral Planning Authority under the approved conditions, shall be displayed at the site office during working hours, and the terms and conditions of the permission shall be made known to any person(s) given responsibility for the management and control of operations.

- 5) Notwithstanding the provisions of Article 3 and Part 17 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, no building, fixed plant or machinery or structure in the nature of plant or machinery shall be erected, installed or placed on site without the prior written agreement of the Mineral Planning Authority.
- 6) No operations associated with the development (other than pumping operations for the removal of water from the extraction area) authorised or required by the terms of this permission, including transport of minerals from the site, shall be carried out at any time on Sundays, Bank or other public holidays or at any other time except between the following hours:
0700 hours to 1800 hours Mondays to Fridays;
0700 hours to 1300 hours Saturdays
- 7) Except as otherwise required by the conditions of this permission, the progressive extraction of minerals from the site shall be carried out in accordance with the details in Drawing Numbers:
PO961/ROCKCUT/22.10.15.007 and PO961/D/SEC/ROCK B
1/25.02.16.005
- 8) Stockpiles of mineral extracted under this permission shall only be made in the land within the boundary of the site as set out as a red line on Drawing Number: PO961/LOCPLAN17.12.15/003 titled: ARDEN LOCATION, dated 17.12.2015.
- 9) The sole vehicular access to the site shall be by way of the Birch Vale Quarry access off Oven Hill Road as identified on drawing number Drawing Number P0961/LOCPLAN 22.10.15/003 Arden Access, and except in the case of emergency, the Arden Landfill Site access off Oven Hill Road shall remain closed to all vehicular traffic from this development.
- 10) No mud or other dirt shall be carried from the site onto the public highway.
- 11) The development shall not be begun before a scheme detailing provisions for wheel cleaning facilities for vehicles leaving the site has been submitted in writing to and received the prior written approval of the Mineral Planning Authority. The scheme shall include details of any on site drainage measures necessary for the recycling and/or discharge of water used in the cleaning process, provision for and the details of the surfacing treatment between the wheel-wash and the highway, and proposals for its implementation and the timing of its implementation. The scheme shall then be implemented as approved and maintained throughout the duration of the development.
- 12) The total number of Heavy Goods Vehicle (HGV) movements (where one HGV entering and then leaving the site would generate two movements),

to and from the whole Arden – Birch Vale site as defined by the blue line on Drawing Number: PO961/LOCPLAN17.12.15/003 titled: ARDEN LOCATION, dated 17.12.2015, shall not exceed 132 per day Monday to Friday and shall not exceed 72 per day on Saturdays. Daily records shall be kept at the site office of the number of HGV movements. These records shall be made available to the Mineral Planning Authority on request.

- 13) No goods vehicles loaded with extracted or processed stone less than 75mm in size shall leave the site uncovered.
- 14) Except as allowed by Condition 15 below, noise emitted from the site as received at the specified noise receptors set out in the table below shall not exceed 55 dB(A), expressed as an LAeq, 1 hour, free field.

Noise Receptor
Gateway 180 metres south east of Moorland Cottage on Morland Road

- 15) During noisy short-term activities at the site, the noise limits in Condition 14 may be exceeded during the daytime for periods not exceeding a total of 8 weeks in any period of 12 months throughout the duration of the development, as measured at the noise receptor identified in Condition 14. During these periods the received noise levels shall not exceed 70dB(A) LAeq, 1 hour, free field. For the purposes of this condition, noisy, short-term activities are such activities as are referred to in Paragraph 022 Reference ID: 27-022-20140306 of the Planning Practice Guidance (Revision date: 06 03 2014) .
- 16) Efficient silencers shall be fitted, used and maintained in accordance with manufacturers' instructions on all vehicles, plant and machinery used on the site. Save for the purposes of maintenance, no machinery shall be operated with covers open/removed.
- 17) With the exception of hauliers vehicles, reversing warning devices on all vehicles used on the site shall be either non-audible, ambient-related or low-tone devices.
- 18) No development shall commence until the applicant has submitted to and received the approval in writing of the Mineral Planning Authority to a scheme which details the mitigation measures to be adopted to control the generation of noise and dust by the development hereby approved and the migration of noise and dust from the site under this permission and contingency measures to be employed in the event that the emission of noise and dust from the development gives rise to any demonstrable adverse impact on lawful uses of surrounding land and property. The contingency measures shall include provision for the Mineral Planning Authority to require the operator to carry out noise or dust monitoring at specified locations; details of how the noise or dust monitoring is to be carried out and the results made available to the Mineral Planning Authority; the circumstances in which operations shall be suspended until effective mitigation measures are implemented and a timetable for the

- implementation of all the contingency measures. The scheme shall be implemented and carried out as approved.
- 19) All rubbish, scrap and waste material either found or generated on the site shall be stored in clearly marked areas or containers until such time as it can be removed to a facility which holds an appropriate Environmental Permit.
 - 20) No blasting shall take place.
 - 21) Only mobile fuel bowzers (double skinned) shall be used for the storage of fuels on site.
 - 22) No foul or contaminated drainage from the site shall be discharged into ground water or any surface water either directly or via soakaways. All foul drainage shall be contained within a sealed and watertight cesspool/tank, fitted with a level warning device to indicate when the tank needs emptying.
 - 23) Throughout the duration of the development the site shall be:
 - i) surveyed prior to the commencement of work starting within 70m of the previous nest site as identified on drawing Peregrine Falcon Nesting Survey (March 2016 EBS submissions);
 - ii) monitored during the breeding season (March/April) for the presence of cliff nesting birds in line with Wildlife and Countryside Act 1981 Schedule 1 and in accordance with the measures set out in the document; PEREGRINE FALCON NESTING SURVEY-WATCHING BRIEF produced by EBS and dated May 2017.

In the event of the presence of peregrine or other scheduled cliff nesting birds no works allowed under this permission shall take place within 70 metres of the nest site until a scheme for the protection of the nest site has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall be implemented as approved.
 - 24) Within 12 months of the commencement of the development, a scheme shall be submitted for the approval in writing of the Mineral Planning Authority providing details of a restoration and five year aftercare plan for the area of the development site outside the area of the landfill planning permission (NEM/1170/4). The scheme shall be implemented as approved.

Wendy McKay

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Alan Thornley – Civitas Planning Limited
Mrs Anne Mosquera – Civitas Planning Limited
Mr Mike Hughes – Site Manager, Arden Landfill Site

FOR THE LOCAL PLANNING AUTHORITY:

Mr Don Mitchell – Derbyshire County Council
Mr Stephen Brent – Derbyshire County Council
Mr Andy Porter – Derbyshire County Council

INTERESTED PERSONS:

Councillor Beth Atkins – County Councillor
Councillor Alan Barrow – Borough Councillor
Councillor David Toft – Chair, Hayfields Parish Council
Ms Jill Jones – Local resident
Mr John Hargreaves – Local resident
Mr Adrian Lee – Local resident

DOCUMENTS SUBMITTED AT OR AFTER THE HEARING

- 1 Attendance list
- 2 Extract of notice CW1/0514/23
- 3 Lists of suggested planning conditions including version showing track changes and table of comments
- 4 Table setting out comments of the main parties on conditions
- 5 Council's written response to Appellant's costs application
- 5 Bundle of e-mail correspondence relating to planning conditions.