

Eich cyf / Your ref

Ein cyf / Our ref: 15/2023/0813

Dyddiad / Date: 27 February 2024

Rhif union / Direct dial: 07425 719375



Richard Hunt
Spring Lodge
172 Chester Road
Helsby
Cheshire
WA6 0AR

Dear Sir / Madam,

**Town and Country Planning Act 1990
Town and Country Planning (Development Management Procedure) (Wales) Order
2012**

CAIS /	15/2023/0813
APPLICATION:	
CYNNIG /	Consolidating application for the winning and working of silica sand
PROPOSAL:	
LLEOLIAD /	Maes Y Droell Quarry Graianrhyd Road, Llanarmon-yn-Iâl, Mold
LOCATION:	

I am writing in response to your pre-application enquiry dated 28/11/2023 regarding the above proposal.

Site Location

The site is known as Maes y Droell Quarry located on Graianrhyd Road, Llanarmon-yn-Iâl, Mold. Maes y Droell Quarry is situated approximately 400 metres north of the village of Graianrhyd, off the Graianrhyd-Eryrys Road. Graianrhyd is located 11 km east of Ruthin, 8 km south of Mold, and 14 km north east of Wrexham, in the County of Denbighshire, and is approximately 1 km to the west of the boundary with the County of Flintshire. The B5430 Ruthin-Minera road passes through Graianrhyd and links up with the A5104 Ruthin-Chester Road, about 2 km east of the village.

Part of the site lies within the Clwydian and Dee Valley Area of Outstanding Natural Beauty (AONB), and a number of public rights of way are affected by the site; details of which will be outlined below within the assessment, and plans are enclosed with this report to show the locations of these constraints.

Proposal

This pre-application enquiry relates to a proposal for a consolidating application for the winning and working of silica sand and recommencement of quarrying operations at Maes y Droell Quarry. The applicant wishes to discuss the steps that would be required to be undertaken in order to regularise the ongoing development and include additional land which has been partially worked but where permission has lapsed.

Planning history of the site

Quarrying has taken place within the Maes y Droell Quarry site for over a hundred years. Previously, in the past, the site was also known as Pen y Foel Quarry. Now known as Maes y Droell Quarry, the site has an extremely complex planning history. The various permissions relevant to the winning and working of mineral at the site is summarised in the table below and expanded on in the following sections.

Permissions Relevant to Working of Minerals

Reference	Description	Date
P11/107	Silica sand quarry workings (IDO Permission)	11/09/1947
11/290	Winning and working of minerals and provision of three vehicular accesses (The 1950 permission)	18/10/1950
11/355	Mining Operations (The 1951 Permission)	22/05/1951
5/25/12749	Registration of IDO Permission	11/06/1992
15/384/96	Application for the determination of new Conditions in respect of the IDO permission	28/06/1996
15/877/98	Application for the approval of conditions in respect of application 11/290	Stalled
15/2006/1371	Extension to existing quarry (1.0 hectare)	Refused – 7/04/2008
15/2011/0692	Importation of inert waste materials for recycling and use in restoration of quarry workings	Refused – 20/02/2013 Appeal withdrawn

For the purposes of this report, the relevant planning history will be discussed as it applies to:

- The IDO permission 'Silica sand quarry workings' (ref P11/107) and the subsequent determination of new conditions in respect of the IDO Permission (ref 15/384/96);
- The 1950 permission for the 'Winning and Working of Minerals and provision of three vehicular accesses' (ref 11/290) and subsequent application for the review for the approval of conditions referring to the application sites as 'North Land'¹ and 'South Land';
- The 1951 permission for 'Mining Operations' (ref 11/355).

¹ The 'North Land' of the 1950 permission lies entirely within the Clwydian Range and Dee Valley Area of Outstanding Natural Beauty

The IDO Permission (ref P11/107)

The earliest planning permission for mineral extraction at the Quarry was granted on 11th September 1947 under reference P11/107. This is referred to as the IDO permission as it was granted under the Town and Country Planning (General Interim Development) Order 1946. Plan enclosed of application site boundary outlined in blue.

The IDO permission was then registered under the 1991 Planning and Compensation Act on 11th the June 1992 under reference 5/25/12749. Subsequently, on the 8th June 1995, the application was made to Clwyd County Council for the approval of new planning conditions and a Certificate of Decision was issued under reference 15/384/96 on 28th June 1996. Having assessed the submitted application plan (enclosed 'MYD IDO 15/384/96/PF Plan 1') it is apparent that this application however, was made incorrectly, as it sought to impose new planning conditions on land outside of the area of land covered by the original IDO Permission. In addition to the land covered by the IDO permission, the application location plan and application form incorrectly identified the extent of the application site as encompassing the 'South Land' of the 1950 permission (reference 11/290), the area of the 1951 permission (reference 11/335), and some additional areas of land that never have the benefit of planning permission previously. The area applied for by the application for the determination of new conditions, made under 15/384/96 is shown coloured yellow on the enclosed Sloan Mead Plan reference MDQ/SC/02.

The approval of the new conditions that was issued by Denbighshire County Council on 28th June 1996 for the new IDO conditions under reference 15/384/96 incorrectly referred to land outside of the IDO permission area. That consent therefore encompassed land which went well beyond the area of the original IDO consent. Having received legal advice, I can confirm that those areas of land outside of the land identified on the original IDO consent cannot be controlled by the new conditions issued on 28th June 1996. The conditions of permission 15/384/96 are valid only to the extent of that area of land encompassing the original IDO permission. Therefore, the new conditions issued in 1996 can only control land within the IDO permission area. Areas outside of that IDO permission could not be included by virtue of Schedule 2 of the Planning and Compensation Act 1991 which makes it clear that the statutory regime applied only to those permissions granted by virtue of the Town and Country Planning Act (General Interim Development) Order 1946 and therefore, it is considered that the Certificate of Decision relating to the IDO land (enclosed) is lawful only insofar as it relates to the 1947 IDO permission areas (reference 11/107).

Condition no. 5 of the application for the determination of Conditions of the IDO permission referred to a plan (enclosed entitled 'MYD plan limit of working') which limited the limit of extraction in the south of the site. This is not enforceable as this land is within the 'South Land' of the 1950 permission, outside of the IDO consent area. Plan 4 (enclosed entitled 'MYD 13/384/96/PF Plan 4') shows visibility splay which effectively removed the corner on Eryrys Road. This too is not enforceable as this includes land

outside of the IDO consent. Furthermore, it does not appear to be listed in the approved plans of the Certificate of Decision, nor is it referred to in any of the conditions.

The 1950 permission (ref 11/290)

Planning permission was granted for the '*Winning and working of minerals and provision of vehicular accesses*' on 18th October 1950 for land to the North of the IDO application area, and to the South of the IDO application area (reference 11/290). See enclosed plan entitled 'MYD plan 11/290' showing the application area coloured in pink labelled A, B and C. For the purposes of this report the land labelled 'B' is referred to as 'North Land', land labelled 'A' is referred to as 'South Land' and land labelled 'C' is the land which is excluded from the planning permission for the winning and working of mineral, as specified in Condition No.1 of planning permission 11/290 (see enclosed certificate of decision).

On 26th January 1996 formal notification was issued by Denbighshire County Council stating that the quarry had been classified as a 'Phase I Active Site' under the Environment Act 1995. The 1950 permission was listed in the 'Notice of sites included in the First List'. However, the accompanying plan only identified the 'North Land' of the 1950 permission and excluded the 'South Land'. As a consequence of this, in accordance with the provisions of paragraph 6(2) and paragraph 12(4) of Schedule 13 of The Environment Act 1995, the 'South Land' of the 1950 permission has ceased to have effect, as that part was not registered correctly in the 'First List'. This was no doubt on the assumption that the remainder of the land had been included (incorrectly) by the IDO review as explained in the section above. As a consequence, the mineral operation in respect of the 'South Land' of the 1950 permission has therefore been worked without planning permission, and is therefore in breach of planning control as the permission authorising that mineral extraction/operation has now ceased to have effect, save for the restoration conditions of the 1950 permission relevant to that part of the land, which continue in force by virtue of the 1995 Act.

In respect to the area lying to the north of the IDO land which for the purpose of this report is referred to as 'North Land' (identified in the 1950 permission as 'B' on the enclosed plan and described in condition 3(a) on the enclosed Certificate of Decision as the 'northern area coloured pink') had indeed been included and registered correctly in the 'first list' and therefore remains extant. However, this part of the planning permission is the subject matter of a requirement to determine conditions submitted in accordance with the requirements of paragraph 9 of Schedule 13 of the Environment Act 1995. A review of the planning conditions of the 1950 permission is therefore required.

On 27th October 1998 an application was made for a review of conditions in relation to the 1950 permission site pursuant to schedule 14 of the Environment Act 1995. Whilst the 1998 application submitted under reference 15/877/98 covered the whole of the area under the 1950 permission (both North Land and South Land), a detailed working plan was only provided for that part of the 1950 permission within the 'South Land'. An outline working plan was provided for the 'North Land'. This 1998 application sought to vary the previously agreed restoration proposals under the IDO consent (see attached

plan drawing 'MYD RML ref 1430/2/A) as it required further consent due to the fact that the IDO permission could not control the restoration in the 'South Land'. However, the ROMP application ref 15/877/98 never provided any detailed or meaningful restoration or aftercare proposals. Thus leaving only part of the site that is covered by the IDO permission with any approved restoration or aftercare plans.

Regardless of the absence of restoration or aftercare provision, the application to review the conditions of the 1950 consent reference 15/877/98 is valid only insofar as it relates to the 'North Land' and to reiterate again, the 'South Land' of the 1950 permission has ceased to have effect as that part was not registered in the 'First List'.

In 1998, Denbighshire County Council requested an Environmental Statement to be submitted to accompany the application (ref 15/877/98), as what was being sought by the review of the conditions comprised a new 'development consent'. However, at that time, an Environmental Impact Assessment failed to be submitted. The ROMP application reference 15/877/98 was stalled pending settlement of legal proceedings over the requirement for a formal EIA. Subsequent to the Welsh Assembly government ruling that stalled ROMPs did need to be supported by an EIA.

Several years later in 2001, Denbighshire County Council wrote to the applicant's agent again requesting an Environmental Impact Assessment to be submitted to accompany the ROMP application. Subsequently, in March 2003, an Environmental Statement was provided, however this only covered the 'South Land'. The MPA therefore considered that it could not determine the review application until a full Environmental Statement was provided for the whole site, thus leaving the ROMP stalled.

In 2007 Denbighshire County Council received further advice from Counsel regarding the status of the site with regards to the errors of both the IDO consent and the registration of the Phase I active sites under the Environment Act 1995. The advice from Counsel concluded that, as a consequence of the 'South Land' not being included on the accompanying plan of the 'notice of sites included in the first list', this 'South Land' was therefore not registered correctly on the 'first list', and therefore this part of the 1950 permission ceases to have affect. Furthermore, until a review of the conditions of the 1950 permission has been determined, with an accompanying Environmental Statement, the site is still controlled by the 1950 consent but only the 'North Land' is now part of that development consent ref 11/290.

Publication of the Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Minerals Permission) (Wales) Regulations 2009 confirmed that the operator is required to submit an Environmental Impact Assessment in order that the 1998 review application can be determined. In December 2010 a draft Environmental Statement was submitted to Denbighshire County Council for the ROMP (for the whole site) alongside an application for the importation of inert waste materials for recycling and use in restoration of quarry workings (reference 15/2011/0692/PF). The ROMP application was held pending subject to the outcome of the inert waste/restoration application. However, in February 2013 the inert waste/restoration

application was refused, and since then the matter of the ROMP has not been progressed.

There would appear to have been a number of administrative and procedural errors made by both the applicant, and the Mineral Planning Authority with regards to the registration of the 1950 permission, and then subsequently with regards to the submission of information, which poses the question of the status of the 1950 permission. The 'South Land' was not registered as a Phase 1 Active site and excluded in the accompanying plan for the 'notice of sites included in the first list' and therefore this land no longer benefits from any planning permission for winning and working of mineral. Furthermore, the subsequent review application did not provide a detailed working plan for the 'North Land'. In 2003 an EIA was submitted but it excluded the 'North Land' so it was not accepted as a valid EIA. An EIA was subsequently submitted in 2010 encompassing the whole site and has been held pending determination.

Only the 'North Land' of the 1950 permission has a valid planning permission for the winning and working of mineral. However, to reactivate this permission a review is required of the conditions, with an accompanying EIA and a detailed phased working plan and subsequent restoration/aftercare. This 'North Land' is also entirely located within the Clywdian Range and Dee Valley AONB which will be discussed below.

The 1951 permission (ref 11/355)

The 1951 permission was also not registered or listed as a Phase I Active Site under the Environment Act 1995. As no application was made to add that consent to the statutory list, it is considered that this application has now expired and ceased to have effect. Land covered by the 1951 consent land does not benefit from any planning permission for the winning and working of mineral, and has therefore been worked over time without planning permission. Mineral working in this land is in breach of planning control as the permission authorising that mineral extraction/operation in that land has now ceased to have effect. A new planning application would be required to regularise the breach and continue winning and working of mineral on this land.

Land outside IDO consent area and 1950 permission area

I refer to the enclosed plan which has a drawing reference of MDQ/SC/02. This shows the area applied for by the application made under 15/384/96 for the review of the IDO consent shown coloured yellow. I refer to this plan again to highlight those areas within the quarry which do not, and have never benefitted from any planning permission for the winning and working of mineral at the site. These areas lie between and outside of the permission boundaries of the IDO consent and the 1950 permission. Mineral working in this land is in breach of planning control. A new planning application would be required to regularise the breach and continue winning and working of mineral on this land.

The Inert Waste Recycling and restoration application (Ref 15/2011/0692/PF)

As stated above, an application for the importation of inert waste materials for recycling and use in restoration of quarry workings was submitted in 2010, but refused on 20th February 2013 for primarily highways, access and visibility grounds, and that of

residential amenity (certificate of decision enclosed). A revised access plan was produced for the appeal (see enclosed drawing ref Site Access no. 2893/28 rev 05). This decision was appealed but subsequently withdrawn prior to a hearing taking place.

Conclusion of Planning History

- The conditions of the IDO consent only can only be applied and enforced against land encompassing the original IDO consent; excluding the 'South Land' of the 1950 consent, the 1951 consent area, and other land that was erroneously included in the 1996 IDO review coloured yellow on plan ref MDQ/SC/02;
- The 'North Land' of the 1950 permission was registered correctly in the 'first list', but the subsequent review of mineral permission (application submitted in 1998) only provided an outline working plan, and the EIA submitted in 2010 is pending. Therefore a phased working plan and restoration/after-care plan is required, alongside a review of conditions and a fresh environmental statement as the 2010 will require considerable amount of updating;
- The 'South Land' of the 1950 permission was not registered correctly as it was not included on the accompanying plan for the 'Notice of Sites Included in the First List', thus it is concluded that this 'South Land' of the quarry no longer benefits from a valid planning permission and therefore mineral working in this land is in breach of planning control and requires regularisation for future working and subsequent restoration;
- The 1951 permission has expired and ceased to have effect as it was not registered under the 'first list' and therefore does not benefit from any planning permission for winning and working of minerals or mining operations in this land, thus leaving a strip of land that lies within the IDO consent area that has no planning permission for winning and working of mineral. Mineral working in this land is in breach of planning control and requires regularisation for future working and subsequent restoration;
- There are other areas of mineral working within the quarry that were erroneously included in the 1996 IDO review plan that have never had the benefit of planning permission or any entitlements for the winning and working of mineral. Therefore mineral working in this land is in breach of planning control and requires regularisation for future working and subsequent restoration.
- The restoration and subsequent aftercare for the site would be required to be considered holistically across the entire site as opposed to those parcels of land that previously corresponded to planning permissions issued in the past.

Other Permissions

Reference	Description	Date
11/481	Crushing, screening and storage plant	26/03/1952
11/556	Erection of building to house crushing and screening plant	29/04/1953
11/636	Industrial building for processing, storage of silica, access and drainage	17/11/1953
11/729	Electricity sub-station	21 09/1954

11/873	Industrial building for processing and loading sand	19/01/1956
5/25/2352	Erection of workshop	17/11/1077
5/25/2486	Tree planting adjacent to road	22/12/1977

It would seem that there have been a number of administrative errors made by both applicant and Mineral Planning Authority over the years. This has rendered a large area in the South of the quarry, and areas in between and outside of the IDO consent boundary devoid of any planning permission for the winning and working of mineral at the site, and has been worked in breach of planning control. The land that does have the benefit of an extant planning permission covered by the 1950 permission in the 'North Land' requires a review of the conditions, a phased working, restoration and aftercare scheme, and an up to date EIA before any future working in this area would be considered permissible. Furthermore, the conditions attached to the IDO consent are outdated and some do not comply with modern guidance and standards.

The disjointed way that the planning history and development of the site has evolved over time has rendered the site without an acceptable approved restoration scheme, with only land encompassing the IDO consent having any form of approved restoration concept. There is no doubt that the site requires restoration in a holistic way, so that the final landform is not disjointed.

Whilst planning permissions were granted for plant, machinery and buildings on the site in the past as detailed above, all plant and machinery has been removed and the buildings that are situated on the site are in a state of disrepair. Any future buildings would require planning permission for their erection alongside any fixed plant.

The following provides further specific information with regards to the site in terms of site specific information and policy constraints.

Planning policy context

All planning applications are assessed against the policies contained in the adopted Denbighshire Local Development Plan (LDP) 2006 – 2021 and in the guidance contained in relevant Supplementary Planning Guidance Notes (SPGs), together with national planning policy and guidance set out in Welsh Government's Planning Policy Wales Edition 12 (PPW 12) and Technical Advice Notes (TANs).

The relevant LDP planning policies that would be applicable for Recommencement of quarrying operations at Maes y Droell Quarry in this location are as follows:

- **Policy RD1** – Sustainable development and good standard design
- **Policy RD5** – The Welsh language and the social and cultural fabric of communities
- **Policy BSC3** – Securing infrastructure contributions from Development
- **Policy PSE15** – Safeguarding minerals
- **Policy PSE16** – Mineral buffer zones
- **Policy PSE17** – Future mineral extraction
- **Policy VOE2** – Area of Outstanding Natural Beauty and Area of Outstanding Beauty

- **Policy VOE5** – Conservation of natural resources
- **Policy ASA2** – Provision of sustainable transport facilities

The Council has adopted a suite of Supplementary Planning Guidance Notes (SPGs) which amplify development plan policies and provide further information and guidance to developers. The following SPGs would apply to the winning and working of minerals and the reactivation of the quarry in this location:-

- SPG Note: Clwydian Range and Dee Valley Area of Outstanding Natural Beauty
- SPG Note: Conservation and Enhancement of Biodiversity
- SPG Note: Planning and the Welsh language
- SPG Note: Trees & Landscaping
- SPG Note: Planning Obligations

National Planning Policy and Technical Advice Notes.

TAN 5: Nature Conservation and Planning (2009)

TAN 11: Noise (1997)

TAN 18: Transport (2007)

TAN 20: Planning and the Welsh Language (2017)

MTAN 1: Aggregate

In terms of national planning policy Planning Policy Wales, Edition 12 (PPW12) and Technical Advice Notes (TAN) 5 and MTAN 1 are considered to be of particular relevance to the proposal.

Principle of development

The principle of the winning and working mineral in this site has been accepted by the virtue of the previous planning permissions granted over the years at this site.

Notwithstanding this, any future consolidation application, would be considered against current policy and would require modern and up to date conditions to ensure that working at the site was carried out in an acceptable way. As the mineral is a silica rock, the previous operator processed the material on site. However, as stated above, there remains no plant or machinery on site. Details would need to be provided to confirm the method of extraction and if the material would be processed on site, alongside specification of the proposed plant/machinery so that the effects could be properly assessed.

Need

It is understood that the mineral deposits at the quarry are a pure natural deposit of silica sand rock. Silica sand is a scarce resource and is a mineral of national importance as it is an essential raw material for the glass making industry and a wide range of other industrial and specialist horticultural applications. For this reason, the quarry is of national importance as there are very few sites in the UK that can produce such a high quality silica sand.

However, it noted that the site has not been actively worked for many years. This has raised concerns that the demand for this material has waned in subsequent years. The reworking may not be economically viable. A full assessment will be necessary that fully

considers the need for this material and the future anticipated markets. It would be important to establish viable quantities of silica rock against the more economically valuable silica sand deposits.

Other material considerations

Notwithstanding the acceptance of the principle of quarrying on this site development and the strategic need for the nationally important mineral, comments are provided below regarding other material considerations which would need to be addressed should a consolidation application be forthcoming and used in the planning balance to assess the acceptability of a future proposal to continue working on the site.

Specialist consultees have only provided a high level response, rather than a detailed one, based on the information provided. Any future application should include details and information in relation to the remaining reserves, predicted annual extraction and exportation rates so that the anticipated extent of the proposed operation could be established. Phased working development/restoration plans would need to be provided with any future application.

It is understood that:

- the sand is located in previously worked areas, waste tips and undisturbed land.
- the approximate quantity of mineral remaining on site is 1 million m³ equating to 2.4 million tonnes although not all of it will be recoverable.
- annual output is anticipated to be in the region of 50,000 tonnes per annum.
- output will be demand driven and various grades are produced which serve different end-uses.
- there will be no importation of waste.

Amenity considerations: Noise, dust/air quality/health impact, blasting

Policy PSE 16 'Mineral Buffer Zones' of the adopted Denbighshire Local Development Plan states:

"Extensions to quarries will only be permitted where a suitable buffer can be retained, i.e. where such an extension would not cause other development to become part of a buffer, and where it can be demonstrated that there is no unacceptable impact on the environment or human health."

Policy PSE 17 of the Denbighshire LDP regarding future mineral extraction states in subsection iv) that applications that accord with the above criteria will be permitted provided that all the following criteria are met:

- a) An appropriate buffer is included, within which no mineral working or sensitive development will be allowed; and
- d) Noise is kept to an acceptable level; and
- e) Measures to reduce the impact of dust, smoke and fumes are implemented; and
- f) Suitable blasting controls are implemented; and

The buffer zones selected reflect the nature and activities of the mineral extraction in question. In the case of sand and gravel, buffer zones are 100 m and in the case of hard rock, they are 200 m (to mitigate the effects of blasting out rock). The application of these distances will be applied unless there are clear and justifiable reasons for reducing them, in line with Minerals Technical Advice Note 1: Aggregates. It is understood that silica rock can be worked without blasting, therefore, the buffer zone for this site would depend on the method of working. This would need to be confirmed in any future application.

The site is surrounded by residential properties. The site has not operated as a working quarry for well over a decade, and those living in the adjacent residential properties will need to be protected from any harm that may derive from reactivating the quarry.

Whilst a consolidation application in those areas of the quarry that is encompassed by an extant planning permission (IDO and 'North Land') would not be considered as an extension to the site, it is clear that there are parts of the site do not benefit from any planning permission. To this regard, any proposals to work mineral in areas without planning permission would be considered as an 'extension' of the permitted site. Therefore, any accompanying working plans for the site should demonstrate that an appropriate buffer zone can be maintained on the site to ensure that there is no unacceptable impact on health and to accord with the provision of Policy PSE 16 and PSE 17. Any future application should contain details of the method of working, clarification of whether blasting is proposed, the specification details of the proposed plant and machinery, and confirmation of the proposed locations of processing.

It is understood that the pre-application advice request proposes that:

- processing operations would be undertaken, as previously consented, for 24 hours a day
- mineral extraction would occur between 0700 and 1900 Monday to Friday and 0700 to 1400 on Saturdays.
- export of mineral would occur between 0700 and 1900 Monday to Friday and 0700 to 1400 on Saturdays.
- there would be no working on Bank Holidays.

Hours of operation are conditioned in Condition No. 6 of determination of new conditions of the IDO consent. Condition No. 7 allows 24 hour/ seven days a week for processing. However, as stated above, these conditions are only enforceable on the land encompassing the IDO consent.

It would not be considered acceptable or reasonable to allow 24 hour processing due to the impact on residential amenity and protection of the AONB.

Noise

Noise limits are set within Conditions Nos.16 and 17 of determination of new conditions of the IDO consent. However, as stated above, these conditions are only enforceable on the land encompassing the IDO consent. Furthermore, the limits that are conditioned are not in line with current guidance. Therefore, any application would need to demonstrate that operations would comply with modern standards.

National guidance states that where aggregates extraction and related operations occur close to areas that are sensitive to noise, particularly residential areas, noise impact must be minimised to acceptable levels. The effects of noise should be fully considered in formulating future proposals for aggregates extraction and noise emissions should be monitored throughout the permitted mineral activity. Where the effects cannot be adequately controlled or mitigated, planning permission should be refused.

Noise of the proposed operations will also be a material consideration and any noise levels should be within the limits as set out in MTAN1. Whilst silica rock isn't strictly speaking an aggregate mineral, the operations involve in the winning and working of silica rock are akin to that of an aggregate, and it is considered appropriate to apply the policies and guidance associated with aggregate minerals in assessing any proposal for mineral working at this site. MTAN1 states:

"noise limits should relate to the background noise levels, subject to a maximum daytime noise limit of 55 dB(A) where background noise levels exceed 45 dB(A). 55 dB(A) is the lower limit of the daytime noise levels where serious annoyance is caused. Where background noise is less than 45 dB(A), noise limits should be defined as background noise levels plus 10 dB(A). Night-time working limits should not exceed 42 dB(A) at noise sensitive properties. Daytime working is defined as 0700-1900 hours and night-time as 1900-0700 hours. Noise limits should be set in terms of LAeq, T over a 1-hour measuring period. LAeq, is the noise index used to describe the "average" level of noise that varies with time (T) and should be measured "free-field" that is, at least 3.5 metres away from a façade to prevent reflection of noise by any façade that faces the noise source. During temporary and short-term operations higher levels may be reasonable but should not exceed 67dB(A) for periods of up to 8 weeks in a year at specified noise sensitive properties."

Any future application should be accompanied by an acoustic assessment which demonstrates compliance with MTAN1 and Policy PSE 17 of the Denbighshire LDP. Noise monitoring locations should be identified on a plan which accompanies the application.

Dust, air quality and health impacts

Extraction and processing of minerals will give rise to dust emissions. From experience of dealing with applications for silica sand extraction, there is often local concern relating to the impacts on health and concerns surrounding silicosis, and small particulates of silica dust. The application should provide information on dust control, risks and mitigation. Information would be required to be submitted within the

application to establish if it is intended to crush and mill the silica rock. If it is intended to work and process the silica rock material, then this should be carried out within an enclosure to contain the dust that would arise from processing this material. Stockpiles would be permissible outside, with the necessary dust mitigation/control measures included within the application. Any 'dust' products must be adequately stored and transported, ideally in sealed tankers to ensure that the fine, processed material would not give rise to unacceptable dust or give rise to health concerns associated with very fine particulate matter. Further advice can be provided on the level of detail that would be required within any dust and health impact assessment.

Any application should be accompanied by an air quality/health impact assessment to ensure that dust can be mitigated to acceptable levels and to ensure that the proposals would not be harmful to health. Mitigation measures should be detailed within the application, and the assessment shall demonstrate compliance with Policy PSE 17 of the Denbighshire LDP.

Blasting

It is understood that silica rock can be worked without blasting. The IDO review stipulated in condition No.15 that there would be no blasting. However, any future application should provide detailed information of the method of extraction. Should blasting be a proposed method of extraction then this shall be restricted to the appropriate limits as set out in national guidance in MTAN1 terms of vibration levels. MTAN1 states that with regards to the maximum level of ground vibration at vibration sensitive locations:

“ground vibration as a result of blasting operations should not exceed a peak particle velocity of 6 mms⁻¹ppv in 95% of all blasts measured over any 6 month period, and no individual blast should exceed a peak particle velocity of 10 mms⁻¹ppv”.

Blast monitoring locations should be identified on a plan which accompanies any future application alongside a blast monitoring protocol to demonstrate compliance with Policy PSE 17 of the Denbighshire LDP with regards to suitable blasting controls.

Quarry Liaison Committee

Often concerns of local residents associated with mineral operations can be alleviated by good operator-neighbour relations, and good, clear and timely methods of communication. Should the quarry be reactivated, it would be strongly advised to establish a quarry liaison committee to ensure that the local residents, community council and County Councillor for the ward are informed on developments at the site. It is advised to include a document within any future application detailing the terms of reference of a liaison committee.

Access / Highways and Parking:

Policy PSE 17 of the Denbighshire LDP regarding future mineral extraction states in subsection iv) that applications that accord with the above criteria will be permitted provided that all the following criteria are met:

- b) Suitable Access and Transport routes are identified.

It is known that there were a number of local concerns previously regarding the highways leading to the site. These concerns are shared by Denbighshire County Council's Highways Officer.

The permitted access points granted from the 1950 permission are shown on the approved plan for permission 11/290 and Sloan Mead Plan MDQ/SC/02 enclosed. However the current access which has been used in recent years is the one shown on the western boundary of the site. The visibility of the junction with Graianrhyd Road is poor and any application should offer an access within improved visibility and compliance with Policy PSE 17 of the Denbighshire LDP. The IDO review offered an improved visibility splay on this junction. However, as discussed, the area to the South of the IDO consent area ('South Land' of the 1950 permission) is not enforceable by the IDO review consent and therefore the junction improvements cannot be achieved through the current extant permissions. Should junction improvements be required for a future consent, third party consent may be required if the land is not within the control of the applicant and therefore, it may be problematic achieving the required visibility. Prior to the appeal being withdrawn for the refused inert waste application reference 15/2011/0692, an alternative vehicular access to the site from Graianrhyd Road was offered, to address some of the reasons for refusal.

A Transport Assessment would be required to be completed to accompany any future planning application, the scope of which would have to be agreed prior to submission. The Transport Assessment would need to provide estimated vehicle movements linked with the proposed exportation rate.

The Transport Assessment would therefore have to be demonstrated that any increase in traffic movement would not cause any danger to all users of the highway, and demonstrate compliance with Policy PSE 17 of the Denbighshire LDP.

Public Rights of Way

Policy PSE 17 of the Denbighshire LDP regarding future mineral extraction states in subsection iv) that applications that accord with the above criteria will be permitted provided that all the following criteria are met:

- c) Final reinstatement of public rights of way should be close to their original alignment with intermediate reinstatement where possible.

A plan has been provided to show the locations of the rights of way that are affected by the quarry site (MYD Constraints Screen shots). The main quarry site lies to the south of Bridle Path No.17 (Route Code 515/90) in the Community of Llanarmon-yn-Iâl. The

Bridle path intersects the 'North Land' consented under the 1950 permission and the land included in the IDO consent reference P11/107 which lies south of the Bridle Path.

Public Footpath No. 15 (Route Code 515/86) is located in the 'South Land' of permission 11/290 and traverses the site in an east-west direction. Public Footpath No.18 traverses both south and north across the 'North Land' of 11/290.

There are a number of outstanding issues associated with the Public Footpath, with the inadequate arrangements made in the past for the diversion of the path. It was originally intended that Footpath was to be formally diverted to provide for continued working of the quarry. However, a previous operator believed that the public footpath had been formally diverted and proceeded to excavate the land where the definitive line of the footpath was located prior to the completion of the Diversion Order.

In effect, the diversion took place on the ground unlawfully without a valid formal Diversion Order. Furthermore, the operator did not make provision of the new route of the public footpath in which the diversion would follow. I understand that this matter was complicated by the initial dispute over the IDO planning consent as outlined above. Not only did previous operator excavate the line of the original Public Footpath, but it now appears that the line of the alternative route, as proposed in the problematic Diversion Order, has also been removed by excavation, and the existing path now is not on the line of the legal route as per the Order.

Another plan has been enclosed entitled 'MaesyDroell-PathNetwork20200624' to illustrate the footpath situation. The uppermost path is the original alignment of Footpath and the Definitive Route. The Pink line is the line as set out in the Diversion Order that was subsequently excavated and is now located within the unauthorised part of the quarry. The red dotted line is the line that the former operators appear to have set out on the ground as an attempt to provide a footpath through the site. This route for most parts has proven to be wholly inadequate and subject to excessive under and overgrowth, which has resulted in a maintenance burden. The steps that have been provided up the steep slope failed at a very early stage. Any new route would need to be robust and durable with a realistic life span.

Further discussion with the Public Rights of Way Officer is required to ensure that any diversion of Footpath in the future is proposed in an acceptable location in the site, and would be constructed to an acceptable standard, and put in place before any further extraction takes place. Compliance with Policy PSE 17 would also need to be demonstrated. Whilst the existing route is not on the definitive line the route laid on the ground is extremely difficult for the Local Authority to maintain and it has become an unreasonable burden on the maintenance budget. The Public Rights of Way Team would want to ensure that the appropriate Orders are made and completed before any further extraction takes place. Due to the steep topography of the site, we would want to discuss securing improvements to the route by the installation of steps made in durable material, and its continued maintenance secured by a commute sum to cover the

additional costs needed to ensure they remain safe for users. The commuted sum could be secured by Policy BSC3; securing infrastructure contributions from development.

Condition 5 of the determination of the IDO conditions ref 15/384/96 restricted development south of the stone wall adjacent to Public Footpath. The enclosed plan shows that extraction would not take place to the south of this footpath. It is understood that the condition to restrict mineral extraction in the area to the south of the quarry between the footpath and the village road was imposed as this area was particularly sensitive. However, as stated previously, conditions governing land that was not included in the original IDO consent are not enforceable.

In conclusion, should a consolidation application be submitted, Footpath No.15 needs to be diverted formally, and if works were to commence in the 'North Land', Footpath No.18 would also require a formal diversion, and the application would need to demonstrate compliance with Policy PSE 17 of the Denbighshire LDP.

Ecology

Policy VOE 5 requires due assessment of potential impacts on protected species or designated sites of nature conservation, including mitigation proposals, and suggests that permission should not be granted where proposals are likely to cause significant harm to such interests. This reflects policy and guidance in Planning Policy Wales (Section 6), current legislation and SPG 18 – Nature Conservation and Species Protection, which stress the importance of the planning system in meeting biodiversity objectives through promoting approaches to development which create new opportunities to enhance biodiversity, prevent biodiversity losses, or compensate for losses where damage is unavoidable.

Planning Policy Wales (PPW) 12 states that *“Planning authorities must seek to maintain and enhance biodiversity in the exercise of their functions. This means development should not cause any significant loss of habitats or populations of species (not including non native invasive species), locally or nationally and must work alongside nature and it must provide a net benefit for biodiversity and improve, or enable the improvement, of the resilience of ecosystems. A net benefit for biodiversity is the concept that development should leave biodiversity and the resilience of ecosystems in a significantly better state than before, through securing immediate and long-term, measurable and demonstrable benefit, primarily on or immediately adjacent to the site”* (para 6.4.5 refers). PPW also draws attention to the contents of Section 6 of the Environment (Wales) Act 2016, which sets a duty on Local Planning Authorities to demonstrate they have taken all reasonable steps to maintain and enhance biodiversity in the exercise of their functions. It is important that biodiversity and resilience considerations are taken into account at an early stage when considering development proposals (6.4.4).

Any future planning application must be accompanied by a Green Infrastructure Statement to address the revised requirements of PPW and that of Net Benefit for

Biodiversity. Planning Authorities must follow the step wise approach (para 6.4.15 refers) which provides guidance of how to approach Net Benefit for Biodiversity. It states that:

“Proposals in statutory designated sites are, as a matter of principle, unacceptable and therefore must be excluded from site searches undertaken by developers. This principle also extends to those sites containing protected species and habitats which are irreplaceable and must be safeguarded. Such sites form the heart of resilient ecological networks and their role and the ecosystem services they provide must be protected, maintained and enhanced and safeguarded from development. It will be wholly exceptional for development to be justifiable in such instances.”

Any working in the ‘North Land’ would therefore need to meet the test of exceptional to be worked in the AONB is a statutory designated site. Examples of sites that include protected species and habitats includes; ancient woodland and veteran trees, ancient hedgerows, wet woodlands, species rich grassland and long undisturbed soils.

An Ecological Impact Assessment and compliance with Policy VOE 5 would have to be demonstrated. The site is known to provide habitat for great crested newts and also the common lizard. The derelict buildings on site may also provide habitat for birds and bats. Species surveys would need to be undertaken prior to a submission, and works would need to be undertake under a European Protect Species Licence that would be issued by Natural Resources Wales.

Landscape, visual impact and landscaping/screening in the AONB:

Policy VOE 2 of the Denbighshire Local Development Plan in relation to the Area of Outstanding Natural Beauty states that in determining development proposals within or affecting the Area of Outstanding Natural Beauty (AONB), development that would cause unacceptable harm to the character and appearance of the landscape and the reasons for designation will not be permitted. Policy PSE 17 of the Denbighshire LDP states that Minerals development should not take place in National Parks and AONB except in exceptional circumstances. Welsh Government has enhanced its position regarding position of AONB in terms of minerals development in the latest published edition of PPW in February 2024 (edition 12) which states in paragraph 5.14.35 that *“Minerals development should not take place in National Parks and AONB except in very exceptional circumstances”*.

The ‘North Land’ of the 1950 permission is located entirely within the Clwydian Range and Dee Valley AONB. Although the majority of Maes y Droell Quarry is just outside the AONB, the scale and nature of the site and its development has impacts well beyond the immediate area which affect the AONB and its setting. The quarry, most notably the existing waste tips and west facing slopes, present a prominent and longstanding scar on the landscape which has a detrimental impact on the protected landscape and the AONB has been calling for sympathetic restoration of the site for many years.

AONB Joint Committee/Partnership raises significant concerns. It was stated that the need for the silica is not adequately demonstrated and if it was, it would need to reach an exceptional demand to outweigh the potential environmental impacts of this development. It was commented that PWW Edition 12 affords equal status of protection to AONBs as National Parks in terms of landscape and scenic beauty and both must be afforded the highest status of protection from inappropriate development.

It was acknowledged that the site has a complex planning history and there is evidence of areas have been worked in breach of planning control and has not been actively worked for at least 10 years and has regenerated naturally.

It was concluded that to re-open the quarry would *“have a significant detrimental impact upon the landscape, bio-diversity and natural tranquillity of the area, the protection of which, are all key priorities within and adjoining the AONB. Similarly, the benefits of any proposed restoration scheme are also diminished given the advanced regeneration condition of the site. To support this proposal would therefore be contrary to LDP policies VOE1 “Key Areas of Importance”.*

Finally, the AONB Joint Committee/Partnership commented that *“the extraction can be undertaken without causing unacceptable harm to the character and appearance of the landscape or reasons for its designation. This is supported by national and local planning policies to protect such areas”.*

If an application were to be submitted, it would need be accompanied by a comprehensive EIA to enable a proper assessment of the proposals to be undertaken.

It has been the AONB's wish for some time to see progressive restoration of the site by the quarry operators, and it is recommended that detailed proposals and a commitment to restore the site must be a key element of any future plans at the quarry. Restoration should be completed as soon as possible and should be commenced at the earliest opportunity. For example removal and restoration of the most prominent and unsightly waste tips should take place at an early stage. It is also recommended that a ten-year aftercare plan should be prepared for managing the site when operations cease.

Reopening the quarry will inevitably have an impact on the surrounding community and local tranquillity through additional noise, disturbance and traffic associated with the development, and any application should clearly set out how this will be managed and mitigated. An important consideration in this regard will be the proposed timescale for completion of operations and restoration of the site.

In terms of landscaping, the IDO Review consent approved restoration and landscaping details (see attached plan 1430/2/A). As discussed above, this would only be enforceable for the areas encompassing the IDO consent. The plan enclosed shows areas to be left undisturbed and planted to provide a buffer zone and screening for properties to the east of the site.

It is evident that there are reserves of silica rock remaining within the site unworked. However, there will be reserves contained within the various milling discards and 'overburden' wastes on site which would be capable of being reprocessed. A holistic landscaping scheme will need to be submitted with any future application, to provide sufficient screening for the surrounding properties and views from the AONB will need to be provided, alongside a full landscape and visual impact assessment, complete with photomontages of the proposed development and subsequent restoration and landscape screening.

Given the anticipated life of the operations any submission will require a restoration plan that provides detailed information landscape management on the periphery of the site with a phased conceptual restoration covering the areas which will be subject to extraction operations.

Restoration and aftercare

Policy PSE 17 of the Denbighshire LDP regarding future mineral extraction states in subsection iv) that applications that accord with the above criteria will be permitted provided that all the following criteria are met:

h) an appropriate restoration and after use is identified for the site.

The site requires a phased restoration ensuring that it considers the site as a whole, as opposed to the piecemeal planning applications that have been submitted in the past. Also, restoration should take place in a phased and timely manner.

The 1998 application ref 15/877/98 sought to vary the previously agreed restoration proposals under the IDO consent (see attached plan drawing 'MYD RML ref 1430/2/A) as it required further consent due to the fact that the IDO permission could not control the restoration in the 'South Land'. However, the ROMP application ref 15/877/98 never provided any detailed or meaningful restoration or aftercare proposals. Thus leaving only part of the site covered by the IDO permission with any approved restoration or aftercare plans. Furthermore, the approved restoration plans of the IDO permission were only a concept. Detailed phased restoration plans were required to be submitted under condition No.25. However, to my knowledge no detailed phasing restoration or aftercare plans have been submitted, thus leaving the site without any detailed approved restoration. The restoration that has been approved only is enforceable to the IDO area of the site and this is considered to be out of date as it was approved in 1996.

It is understood that there is a considerably amount of overburden and quarry waste on site. A survey of this material would be required to establish if there is mineral contained within the spoil heaps which could be reworked and also to establish if there is sufficient material on site for restoration. If not, information would need to be provided to consider varying the restoration scheme.

Historically, water features in remote quarry settings have attracted trespass and antisocial behaviour and area health and safety hazard. Consideration in removing the

water features in the final restoration should be considered. Detailed phased aftercare plans would also be required to be submitted.

After-use

Whilst any future after-use of the site would require further planning permission, it would be interesting to know if the applicant has given any thought to the site once the site has been restored. The working and subsequent restoration of the site could be developed in a way that would lend itself to a future use (subject to further planning consents).

Conservation/ Archaeology

The site and surroundings lie outside the designated Areas of Historic Landscape. There are no known sites of archaeological interest or importance that would be affected should mineral workings be reactivated in the 'North Land'. The rest of the site has been previously disturbed and therefore any archaeology would have been disturbed.

Welsh Language and Social and Cultural Fabric of communities

The requirement to consider the needs and interests of the Welsh Language is set out in PPW 12; TAN 20 and Policy RD 5 of the Local Development Plan.

TAN 20 (2017) provides the most up to date guidance on the consideration of the Welsh Language. The proposal would be considered to be a windfall site for the purposes of TAN 20, and therefore the impact of such a proposal on the linguistic character of the area would need to be assessed at application stage.

However, it is advised that Welsh language statement rather than a full assessment would be acceptable due to nature of the proposal, which should promote measures that aim at supporting the Welsh language.

Conclusion

It is clear that there is a principle established for the winning and working of silica rock in this location by the virtue of past planning permissions. Minerals can only be worked where they occur and the mineral deposits at the quarry are thought to be a pure natural deposit of silica sand rock, it is therefore considered that the quarry may be of national importance. This would be a material planning consideration in weighing up the planning balance of working the deposits in the 'North Land' within the AONB, and any future extensions to the site must be evidenced to sufficiently to meet the test of "very exceptional circumstances".

Due to errors made in the determination of the review of the IDO consent, and subsequently errors in the registration of the 1950 permission on the 'first list',

approximately half of the quarry has been worked since 1995 without the benefit of planning permission, as the 'South Land' no longer has an extant planning permission. The 'North Land' of the 1950 permission, which lies entirely within the AONB has never been worked, but the consent remains extant in planning terms. The conditions of the 1950 permission for the 'North Land' requires a review, and a revised, updated EIA is required to be submitted before any review application can be determined for mineral extraction in the 'North Land'. There are areas within the quarry site that have never benefitted from planning permission for the winning and working of mineral, or those permissions have expired. The site remains unrestored. Any future application for the regularisation, consolidation, and retention of permissions to work the mineral, must provide for the improvement of the site, progressive and holistic restoration and subsequent aftercare.

There are a number of other material planning considerations and also issues which need to be resolved, as outline above which will also be taken into account when determining any planning application.

Other Issues:

Pre-application Consultation Requirements

Since 1 August 2016, all major development proposals are required to carry out pre-application consultation in accordance with Article 1 of the Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2016 prior to submitting a planning application. Please refer to the Welsh Government Guidance on pre-application consultation which sets out the procedures that will need to be followed. <https://gweddill.gov.wales/topics/planning/policy/dear-cpo-letters/new-development-management-procedures/?lang=en>

Environmental Impact Assessment

Publication of the Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Minerals Permission) (Wales) Regulations 2009 confirmed that the operator is required to submit an Environmental Impact Assessment in order that the 1998 review of the 1950 permission can be determined. This however would only apply to the 'North Land' of the 1950 permission.

Should a consolidation application be submitted, the total site area would need to be confirmed to establish if the proposal would be considered to be Schedule 1 or Schedule 2 Development under the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 (2017 EIA Regulations). It is possible that the site area would exceed the threshold for Schedule 1 Development if the surface area greater than 25 hectares. However, if the site area is less than 25 hectares, it is considered the proposal would fall under Schedule 2 development, Part 2a) Extractive Industries which requires screening for Environmental Impact Assessment (EIA).

If this is the case, and the application site areas is less than 25 hectares, the Council can issue a formal Screening Opinion on the need for EIA upon receipt of a written request. Any such request would need to be supported by the necessary level of

information prescribed in the 2017 EIA Regulations. A formal Scoping Opinion can also be requested to establish the Scope of any required Environmental Statement, whether it be considered Schedule 1 or Schedule 2 development.

Please be advised that should an application for Schedule 2 development be submitted without an Environmental Statement and where a Screening Opinion has not previously been adopted, the Council will be obliged to screen the proposal upon receipt of the planning application, and should a positive opinion be formed, the application will be invalidated until such time as an Environmental Statement is submitted or a Negative Screening Direction has been issued by Welsh Ministers.

Submitting a planning application

Should an application be progressed, in addition to the usual plans and documents, the following supporting documents would likely be required:-

- Pre Application Consultation Report
- Planning Statement
- Welsh Language Statement/Assessment
- Transport Assessment
- Green Infrastructure Statement
- Ecological Impact Assessment
- Tree Report/ Arboricultural Method Statement
- Landscape and Visual Impact Assessment
- Noise and Vibration Assessment
- Blasting Protocol (should blasting be proposed)
- Dust/Air Quality/Health Risk Assessment.
- Geological, hydrogeological, hydrological and water quality
- Construction Environmental Management Plan/Method Statement should the buildings be proposed to be demolished
- Working programme and Phasing Plans
- Over all restoration concept
- Phased Restoration plans
- Aftercare scheme
- Terms of reference of a quarry liaison committee

I would advise that this response is based on the information available. It does not constitute a formal determination under the Town and Country Planning Act 1990. Any opinions contained herein are those of the Officer concerned and cannot be held as binding on the Council or its members.

Yours sincerely
Charlie Pope

Attachments:

- IDO Consent Ref P11/107: Decision notice and approved plan
- 1950 Permission Ref 11/290: Decision notice and approved plan (also showing IDO Consent Area and area to west not included in the permitted working area)
- 1951 Permission Ref 11/335: Decision notice and approved plan
- Review of IDO conditions Ref 15/384/96: Decision notice and approved plans; site plan, restoration proposals, visibility plan and limit of working plan
- 1998 Review of Mineral Permission Ref 15/877/98: Plan showing all planning history
- Aerial photograph (from 2009) showing extent of AONB
- Map showing footpath networks
- A screen shot of constraints including the rights of way, mineral buffer zone, AONB and mineral safeguarding area taken from:
<https://maps.denbighshire.gov.uk/MyDenbighshire.aspx>
- Application ref 15/2011/0692: committee report and refusal decision notice
- Site Access Plan prepared for the appeal decision for application 15/2011/0692 for the continuation of working and inert waste recycling/infilling to address a reason for refusal