Minerals Casework

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Key legislation and policy

Primary Legislation	Town and Country Planning Act 1990 Town and Country Planning (Minerals) Act 1981 Planning and Compensation Act 1991 Environment Act 1995
Secondary Legislation	Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015
National policy and guidance	• Planning Policy Wales (PPW10) • Minerals Planning Policy (Wales), Minerals Technical Advice Note (Wales) 1: Aggregates • Minerals Planning Policy (Wales), Minerals Technical Advice Note (Wales) 2: Coal • Best Practice Guidance on Restoration Liability Assessments for Surface Coal Mines, February 2016, by The Coal Authority for Welsh Government • Minerals Planning Guidance: MPG14, Environment Act 1995: Review of Mineral Planning Permissions, September 1995 DoE/Welsh Office
Judgments	• None
Other guidance	• Welsh Government guidance on some aspects of minerals development is not up to date, and some guidance for England can be useful, e.g: • Guidance on the planning for mineral extraction in plan making and the application process, MHCLG - 17 October 2014

Introduction

1. This guide gives advice on issues relating to minerals planning casework. It is intended to assist Inspectors who may not be familiar with some of the unusual features of such work. Minerals planning casework is subject to the same Town and Country Planning legislation as other planning work. However, it is also subject to several additional features.

2. A simple general point is that, in the past, and still to a large extent in England, planning responsibilities were carried out by the Minerals Planning Authority rather than the Local Planning Authority. Historically, these roles were carried out by the County Council and the District Council respectively, a situation which no longer applies in Wales. However, the term Minerals Planning Authority is still sometimes used.

3. PPW (para 5.14.4) tells us that *"Mineral working is different from other forms of development, in that:*

   - *extraction can only take place where the mineral is found to occur;*
   - *it is transitional and cannot be regarded as a permanent land use even though operations may occur over a long period of time; and*
   - *when operations cease land needs to be reclaimed to a high standard and to a beneficial and sustainable after-use so as to avoid dereliction and to bring discernible benefits to communities and/or wildlife.*

4. It is also different in that mineral operations and proposals are seen in a regional, or even national, perspective, and the need for new provision is assessed on the basis of that wider need. In addition, unlike other developments, planning permissions for mineral workings are subject to periodic review of conditions.

5. Proposals for minerals developments are often of particular concern to the local population, and their active and passionate participation can usually be expected. They tend to be particularly concerned about noise, dust, HGV movements and impacts on the landscape and ecological features.

Regional Aggregates Working Parties (RAWPs)

6. Planning Authorities are required to plan for the steady and adequate supply of minerals by designating specific sites, preferred areas or areas of search in their development plans. In doing this they are expected to co-operate with other Planning Authorities, and in Wales this is co-ordinated through 2 RAWPs, the North Wales RAWP and the South Wales RAWP. RAWPs are technical advisory groups, comprising representatives of each Planning Authority and of the aggregate industry operating in the area. Their role is to produce useful and comprehensive data on aggregate supply and demand in the area and to provide advice to the Planning Authorities.

7. Expressed in more detail, this amounts to:

- the provision of advice to each Planning Authority in its annual assessment of local aggregates in its area;
- the provision of an assessment on the overall supply and demand situation in the RAWP area, including whether or not the area is making an appropriate contribution towards meeting regional and national needs, and taking into account economic data and emerging market trends; and
- the collection and reporting of data on minerals activity in the area, including annual data on sales, permissions and mineral reserves in the area and data on recycled and secondary aggregates,

8. Each RAWP produces a Regional Technical Statement (RTS) which it reviews at regular intervals (to meet the PPW requirement for *"regular assessment of mineral resources"* (para 5.14.20)), typically every 5-6 years. The RTS provides an assessment of the current landbank (expressed in years) for each type of mineral, based on minerals sites with extant planning permissions and the rate of demand over the previous 10 years. It may also provide an assessment based on changing market conditions.

9. The RTS also addresses the circumstances of each Planning Authority and provides advice on what provisions for minerals are appropriate in development plans. The RTS assessments may also be material considerations for planning applications and appeals. It is Welsh Government policy that adequate (but not excessive) landbanks should be maintained, and this is measured in terms of the expected remaining landbank at the end of the development plan period. For example, for crushed rock PPW (para 5.14.15) says this should be a minimum of 10 years throughout the development plan period (i.e. for a 15 years plan it should be at least 25 years at the start and 10 years at the end).

10. In planning applications and appeals for minerals development the need for the development is usually argued by reference to this policy requirement and the RTS projections. Applicants sometimes try to make their own assessments, but this is difficult to do as competing operators are reluctant to provide confidential business information outside the RAWP umbrella.

Review of Old Mineral Permissions (ROMP), Interim Development Order (IDO) Permissions and Others

11. Following the Report of the Stevens Committee in 1976, the Government initiated a procedure for old minerals permissions to be reviewed to bring their planning conditions up to date. The Town and Country Planning (Minerals) Act 1981 introduced a duty for Mineral Planning Authorities to periodically review mineral sites in their areas. However, that was not as successful as hoped, and so further reform steps were included in the Planning and Compensation Act 1991, which dealt with the oldest extant consents, the Interim Development Order permissions granted between 1943 and 1948. These had been preserved by successive planning Acts, and their holders were required to submit a scheme of operating and restoration conditions for approval. Of particular

importance was the fact that there was no entitlement to compensation for the cost of complying with the new conditions.

12. These provisions were followed by the Environment Act 1995, which extended the review process to permissions granted between 1948 and 1982 and introduced the requirement for subsequent periodic reviews of conditions at intervals of about 15 years throughout the life of all minerals permissions (though there is some flexibility on this if circumstances have not changed). The Act specified procedures for the initial reviews, of which there were a lot, and a timetable covering the different types of permissions. Nowadays, it is the subsequent periodic reviews that come forward. Planning Authorities have a duty to initiate these by giving an operator 12 months notice of the due date, and operators then have to submit applications with proposed conditions for consideration. There are the usual opportunities for appeal of these applications.

13. These reviews of planning conditions may be further divided into 2 types: dormant sites and active sites. Dormant sites are sites granted planning permission before 1982 but where extraction has yet to take place. These permissions have few, if any, operating and restoration conditions attached to them. Their operation cannot now be instigated until approval has been granted for a new set of conditions. Such sites are now rare as most permissions have been revoked where there is no prospect of them being worked in the foreseeable future. Almost all review applications are now for active sites whose permission will last for many years, and the aim is to ensure that they continue to operate to high working and restoration standards. The types of conditions applicable are described in the section below.

Other Review and Control Measures

14. The 1990 Act provides other powers to help Planning Authorities control minerals working through a range of Orders. These comprise Revocation, Modification, Discontinuance, Prohibition and Suspension Orders. They are intended for use as a last resort if discussions with the operator have been unsuccessful and an enforcement notice would not be sufficient.

15. Modification and Revocation Orders can only be made before minerals development begins or in respect of uncompleted parts of the development, e.g. for aftercare conditions before restoration has been completed. Discontinuance Orders are to require changes to the minerals use, e.g. to stop the development, impose additional conditions, or to require alteration or removal of buildings or plant.

16. Prohibition Orders are intended to make it absolutely clear that minerals development has stopped and cannot resume without a fresh planning application. They can also impose requirements such as the removal of machinery and compliance with existing conditions, particularly restoration conditions. They may also apply additional requirements, such as restoration and aftercare conditions. They may be made when it appears to the Planning

Authority that minerals development has occurred in the past but has permanently ceased. The test for “permanently ceased” is specified as:

- no minerals development has occurred to any substantial extent for at least 2 years; and
- it appears to the Planning Authority that resumption to any substantial extent is unlikely.

17. The latter should take into account evidence provided by the owners or operators (if provided) on matters such as:

- the pattern and programme of their business operations, including forecasting of trends;
- production and markets for their products;
- the quality and quantity of workable materials; and
- whether there is a genuine intention to work the site.

If the Order goes to a public inquiry, the Planning Authority will have to demonstrate that their decision to make an Order is reasonable in the light of these and any other considerations.

18. Finally, Suspension Orders may be used to require steps to be taken for the protection of the environment. They are essentially a holding measure which restricts the resumption of minerals working until environmental problems have been sorted out, e.g. to require the removal of plant, tidying up of the land or the provision of fencing.

Conditions and Typical Issues

19. Planning permissions for minerals development tend to be subject to an extensive suite of planning conditions, reflecting the many potential issues that need to be considered in such cases. A lengthy potential list is provided in guidance:

- noise associated with the operation (plant, HGVs);
- dust (in terms of both amenity and health effects), where issues are usually expressed in terms of PM_{10} and/or $PM_{2.5}$ fine particulate matter;
- air quality, particularly fine dust particles and plant emissions;
- lighting;
- visual impact on the local and wider landscape;
- landscape character;
- archaeological and heritage features;
- traffic, especially HGV traffic, in respect of noise and disturbance, safety, and hours of operation;
- risk of land contamination, especially from diesel spillage;
- soil resources;
- geological structure;
- impact on best and most versatile agricultural land;
- blast vibration;

- flood risk;
- land stability and subsidence;
- internationally, nationally and locally designated wildlife sites, protected habitats and species, and ecological networks;
- impacts on nationally protected landscapes (National Parks, AONBs);
- nationally protected geological and geo-morphological sites and features;
- site restoration and aftercare;
- surface and ground water issues;
- water abstraction from nearby boreholes and springs (e.g. due to drawdown of water table).

20. Some matters are particularly pertinent to minerals development and to conditions attached to such permissions:

- Noise: Standard noise limits (usually measured at the nearest sensitive receptors) are usually set for normal operations. However, a higher limit is applicable for short-term temporary operations (not exceeding 8 weeks per year), such as the construction of bunds around the site to screen nearby properties.

- Blasting: Blasting is usually allowed only during limited hours of the day, and limits are set on ground vibration in terms of both normal levels (often expressed as a 95%ile) and an absolute maximum level. It is normal to advertise the blasting timetable (e.g. by a notice at the site entrance) and to give a siren warning on each occasion. Modern blasting is carefully designed to minimise the extent of air overpressure and to fracture the rock without wasting energy.

- Dust: Dust is usually controlled by a combination of conditioned measures, which include the regular wetting of haul roads and working areas using a water bowser, limits on drop heights for loading and movement of material, speed limits on the site, design of plant and machinery exhaust systems, the sheeting of lorries, and limits on operations during extreme weather.

- Environmental Protection: The approval and use of an Environmental Management System to be used during site operations is usually covered by condition, in addition to specific measures to avoid pollution and unnecessary ecological disturbance.

- Phased Operation: The extraction of minerals is usually carried out gradually from one end of the site to the other, which limits the extent of operations on the site at any one time and allows restoration to be carried out gradually as the work progresses. The proposal should include a working plan which is usually described in phases, and this plan is specified by condition.

- Site Restoration: Site restoration measures are usually included in the working plan described above. Depending on the expected duration of operations on the site, the final site restoration measures may be specified by condition or a condition may require the final measures to be put forward

for approval nearer to the expected end of the extraction of minerals from the site (which typically takes place over a period of 10-20 years, or even longer). The possibility of premature ceasing of operations is also usually allowed for with a suitable condition.

- Aftercare: It is usual to specify an aftercare period of at least 5 years to ensure the final restoration measures for the site are successful. Longer periods are sometimes suggested.

21. Some matters cannot be covered by planning conditions, and 2 matters in particular are commonly the subject of Section 106 Undertakings. The first is the routing of HGVs. Road users have a right to use the public highway, and this right cannot be removed by a planning condition. If it is necessary to limit the routes used by HGVs this can only be done through a Section 106 Undertaking. The Inspector needs to be satisfied that the routing of HGVs is within the control of the site operator, and this needs to be questioned. HGVs owned by the site operator can be readily controlled. Those operated by a contractor need appropriate controls included in the contract terms and the inclusion of disciplinary measures in the event of non-compliance. Unplanned site visitors cannot be readily controlled.

22. The second matter is that of financial provisions and, depending on the duration and circumstances of the site operations, the Planning Authority may seek financial assurances that the site operator will meet its long-term commitments for site restoration. It may seek a financial bond or some sort of insurance arrangement that can be called in should the site operator default on its commitments. There are several models on how these arrangements can be assured, but they need to address all possible eventualities.

23. Finally, a matter often raised by local objectors is how can they be sure the Planning Authority will have the resources to properly monitor site operations over a period of several years. Minerals development is subject to special arrangements in this regard. Under the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015 the minerals operator is required to pay a fee to enable the Planning Authority to monitor planning conditions and obligations (currently £330 per visit) with up to 8 site visits per year.

Effects on Other Development

24. Welsh Government policy prescribes a buffer zone such that mineral development should not normally be permitted within a prescribed distance of existing sensitive development. However, the Courts have established that consideration of applications and appeals is a matter of planning balance, taking into account the benefits of the development and the environmental and amenity effects, which can usually be mitigated to some extent. Policy guidance acknowledges that exceptions can be made in appropriate circumstances.

25. The buffer zone principle also applies in reverse. Thus, if a sensitive new development is proposed within the buffer zone of an existing minerals operation, or a site designated for future minerals use, then account should be taken of the potential for future occupants of the proposed new development to cause constraints to be applied on operation of the minerals site. Noise and disturbance, blasting and HGV movements are particular features of minerals operations which have potential to cause nuisance to nearby sensitive receptors.