



Date: Tuesday, 5 October 2021

Time: 2.00 pm

Venue: Shrewsbury/Oswestry Room, Shirehall, Abbey Foregate, Shrewsbury, Shropshire, SY2 6ND

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SOUTHERN PLANNING COMMITTEE

SCHEDULE OF ADDITIONAL LETTERS

NOTE: This schedule reports only additional letters received before 5pm on the day before committee. Any items received on the day of Committee will be reported verbally to the meeting

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Agenda Item 8

SOUTH PLANNING COMMITTEE		
SCHEDULE OF ADDITIONAL LETTERS		
Date: 5 October 2021		
NOTE: This schedule reports only additional letters received before 5pm on the day before committee. Any items received on the day of Committee will be reported verbally to the meeting		
Item No.	Application No.	Originator:
6	21/03846/EIA	Residents action group CRAG
<p>CRAG, unincorporated resident association in Condover, OBJECTS to the above application.</p> <p>Overview</p> <p>The Planning Application is a proposal for sand and gravel extraction beneath existing lagoons, with an additional proposed southern extension and progressive restoration at Gonsal Quarry. The application states that a total of 660,000 tonnes of saleable sand and gravel would be worked, lasting for 6 years at the proposed rate of 110,000 tonnes per annum. This would more than double production at the quarry compared to the currently approved level (50,000 tonnes per annum), and is the equivalent of 44 HGV movements a day, in and out. That is every 13 minutes during a working week.</p> <p>This new planning application, exactly as last year's planning application which was unanimously rejected by the Southern Planning Committee, still fails to meet the condition stated in the SAMDev Schedule MD5b: Phase 2 Site Allocations' of Shropshire Council SAMDev, which explicitly states that the extension of Gonsal Quarry would be subject to conditions, including the creation of a new access to the A49.</p> <p>The proposed aftercare period is for six years, which runs counter to the requirements of the NPPF and the PPG section on minerals which requires restoration to the highest standard as soon as possible. Any further extraction should be appropriately conditioned and, given previous breaches, further extraction should be bonded to ensure appropriate and timely restoration. The Council are specifically requested to identify which measures they propose to implement to ensure restoration and to state how these will be enforced.</p> <p>This application is strongly opposed by the local community, by Condover Parish Council, and the majority of elected representatives.</p> <p>Reasons for the objection:</p> <p>Is There Any Unfulfilled Need Of Building Materials In Shropshire?</p> <p>What's the exact grading of the sand extracted in Gonsal Quarry? We've already asked this question and had no reply, but it seems that it's not high quality, definitely not batching plant sand and therefore MANY OTHER QUARRIES in Shropshire can provide the industry with the same kind of material. The applicant themselves owns many quarries in the area.</p> <p>Extract from West Midlands AWP Annual Monitoring Report 2017 (Published April 2019):</p>		

"The sand and gravel landbank for the West Midlands as at 31 December 2017 was 14 years, (based on 10yrs sales), which is in excess of the "at least" 7 year requirement of the NPPF. Landbanks for the sub-regions are detailed in the Table 4."

Paragraph 1.24, from the same document:

"The latest available data shows that 0.67mt of sand and gravel was produced in Shropshire and Telford & Wrekin in 2017, which is a 9.5% drop from 2016 figures, and below both the 10 year rolling average for sand gravel sales (0.71mt) and the 3 year average (0.68mt). The landbank based upon the ten year average sales data at the end of 2017 was approximately 16.7 years".

Clearly, a landbank of 16.7 years is highly in excess of the "at least" 7 year requirement of the NPPF.

While "it is essential that there is a sufficient supply of minerals to provide the infrastructure, buildings, energy and goods that the country needs" (NPPF 2021 209), given that Shropshire Council has recently approved in Condover an extension for Hanson Quarry to extract almost three million tonnes (sic) of materials over the next 14 to 15 years which was not in SAMDev, the village contribution to the local and national production has definitely already been fulfilled.

Therefore there is no local or national need for more sand from Gonsal Quarry, especially if one considers the quality of the material extracted and that these materials have to be moved for a good 3 miles before reaching the Primary Route Network, passing two schools (one primary and one pre-primary school), a Grade II listed bridge and a large conservation area within an historic village. The condition of a new direct access to the A49 was in fact what allowed Gonsal Quarry to be included in the Samdev plan for further extensions.

2) The current access to the primary route network is not at all satisfactory

SAMDEV MD17 1. ii. "Where opportunities to transport minerals by rail are not feasible there will be a preference for new mineral sites to be located where they can obtain satisfactory access to the Primary Route Network"

Minor extension after minor extension, the applicant has exploited the site at Gonsal Quarry for many decades. This latest proposal is presented as small scale, but it's not if you consider the numerous extensions over such a long time. Condover is not the same place as it was 50 or 30 years ago, every year there are more houses, more cars, and more businesses in the village. Whilst in the meantime HGV and Agricultural vehicles are being super-sized and are expecting to use a local road network established in medieval times whose geometry was set by the Victorians, the local road network is not sized for modern heavy goods traffic.

There have been fundamental changes in the circumstances of the local road network that have not been properly recognised by the authorities: i.e. the recent exponential village growth (over 50 houses in the last five years).

Condover residents refute the transport assessment made the applicant, it should be completed independently by Shropshire Highways/WSP and Highways England.

During the traffic survey, many residents have witnessed an increased number of trucks going to / coming from to Gonsal Quarry taking the Dorrington route rather than passing through Condover (and therefore actively avoiding the traffic count).

Not only was it done during the pandemic when many businesses were closed, but it should cover a longer period of time, otherwise it's extremely easy for the applicant to give an appearance that doesn't correspond to the reality.

The residents have done several traffic surveys and what the applicant declared (the quarry traffic is between 15% and 50% of the HGV traffic) is not realistic.

The peak hour flows of 277 movements recorded by the applicant's consultant is definitely not what you would have in normal times (all businesses opened) and with a quarry production that in 2019 of 150,000 tonnes per year, it should be noted that this was in breach of the planning conditions in place restricting extraction to 50,000 tonnes per annum.

The larger size of HGVs and tractors compared to what it was decades ago represents a critical problem.

There are NO formal passing places in Condover village. To pass each other, two large vehicles have either to mount the pavement and/or use people's driveways and the post office lay-by which are PRIVATE LAND.

Condover residents do not wish for the quarry HGVs and the rest of the heavy traffic to use their driveways as passing place. It represents a continuous source of irritation and violation of their personal property. What would happen if tomorrow all Condover residents decide to put a gate at the edge of their property to stop this trespassing?

Shropshire Council should agree/provide a suitable route if they grant permission to businesses, they cannot simply transfer the highway problems onto the residents shoulders. If Condover's roads are not big enough for two HGV to safely pass each other, SC should either find a suitable route or reject the planning application.

When viewed against more general policy:

1) National Planning Policy Framework (NPPF 2001), paragraph 111: "Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe". Residents think that this planning application would definitely have a significant and severe impact on highway safety: using the number of road accidents in the village occurred in the past to justify a statement of future safety is misleading. The village was much smaller, over 50 new houses in the past five years and new businesses in the area had a great impact. Doubling (or more) the permitted production will mean doubling the permitted number of HGV Quarry transits and our roads and pedestrians are unable to cope.

3) Adverse effects from the transport of quarry materials

There is no consideration in this planning application of the adverse effects (noise, dust, vibrations, road dangers) of the quarry HGVs passing a primary school, a pre-school and an historic village which is a conservation area since 1976.

Health and safety issues: the road through Condover is dangerous and the local residents are worried to walk, the pavements are narrow and because the trucks regularly drive on the kerb to pass each other pedestrians regularly have to duck into private driveways for refuge, and cycling for children anywhere around the village is just not safe because of the size, speed and frequency of the large vehicles treating Condover like a motorway slip road.

The level of traffic noise and road dust generated in the village (especially in the conservation area) is already unacceptable and it will be a disaster for our quality of life if the quarry increases from 50.000 to 110.000 the annual tonnage permitted and the number of associated journeys, as would be the outcome of this planning application.

The road surface and pavements are in a terrible state, the surface is damaged and the edges crumbling. The trucks often hit garden walls, houses, barns roofs, and knock over traffic signs (they seem not to realise and never stop to take ownership of the damage).

The vibrations of the heavy trucks damage the sandstone walls that are a key feature of the conservation area by regularly mounting the narrow pavement and the near constant vibration is shaking structure and foundations of the listed buildings lining the route of the trucks through the village.

Residents have great concern for the habitat and protected species, Condover is a wildlife haven from bees, badgers, dragon flies, owls, bats and not to mention great crested newts.

When viewed against more general policy:

1) NPPF 2021 211 a): "In considering proposals for mineral extraction, minerals planning authorities should provide for the maintenance of landbanks of non-energy minerals from OUTSIDE [...] CONSERVATION AREAS".

The impact and damage to the historic centre of the village by the quarry trucks is almost comparable as if the quarry site was inside the conservation area because its current access to the primary road network requires constant transit through the conservation area.

2) NPPF 2021 211 b): "In considering proposals for mineral extraction, minerals planning authorities should 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 from individual sites and/or from a number of sites in a locality".

The number and quality of the residents' comments to this application and the one proposed (and rejected) in 2019 prove that the impact of the quarry activities on the environment and the people's health has become unacceptable. Our biodiversity is at risk (many Great Crested Newts live on the lakes they want to dig again). Gouged walls, direct impacts and vibration are constantly damaging our listed buildings and listed bridge. Noise, dust and particle emission from the diesel-engine HGV are affecting our health. Consider that in our village there is another quarry for sand and gravel, which doesn't affect the residents as much as the current applicant because their HGVs don't pass through the centre but still use the same access as the residents to the A49, making it more busy and dangerous.

3) NPPF 211 c): "In considering proposals for mineral extraction, minerals planning authorities should ensure that any unavoidable NOISE, DUST and PARTICLE EMISSIONS and any blasting vibrations are controlled, mitigated or removed at source, and establish appropriate noise limits for extraction in proximity to noise sensitive properties"

In this application there is no mitigation for noise, dust, particle emissions and vibrations caused by the quarry traffic that are inflicted every day on the village residents.

4) NPPF 211 e): "In considering proposals for mineral extraction, minerals planning authorities should provide for restoration and aftercare at the earliest opportunity, to be carried out to high environmental standards, through the application of appropriate conditions."

The proposed aftercare period is for 6 years, which is not fast enough.

Comments on consultation response from Highways Development Control

a) They highlighted a reduction of 27% of quarry production compared to the 2019 application but this, in absence of any further mitigation measure, doesn't change the impact on the local community (and still represent a stunning +120% to the latest approved application).

b) The flaunted 9p per tonne for highway maintenance contribution is similar to the 7p per tonne maintenance contribution stipulated in the 2013 planning permission but the

local community has hardly seen any evidence of it. The state of our roads is appalling and... has it even been paid? Consideration should be given that any road damage impacts compound on an exponential basis as the weight of the vehicles and the numbers of the vehicles increases.

c) The authorities mention a long history of the quarry activities at Gonsal and the routing of HGV quarry traffic through Condover but forget to acknowledge how much Condover has changed over the years. To face the current road safety emergency, Condover residents have had to modify their normal behaviours but this is unbalanced, unfair and unsustainable in the long term. In any case, who has corroborated that the historical production figures declared by the applicant are correct? An independent body need to look at the company accounts and how their weigh-bridge works (automatic or manual)? Some due diligence must take place.

d) The fact that a direct access to the A49 is not economically viable "having regard to the current scale of extraction" should be no concern for the Authority whatsoever. The reason of that condition on SAMDev was to protect the village of Condover, not to make it easier for the applicant. In any case, with a production of 660,000 tonnes and an estimated sale price of £30-35 per tonne, the total quarry turnover related with this planning permission would be around £20-23 million. The cost of the new link road to the A49 would be only about 10% of that turnover, so it seems that this cost could be easily absorbed.

e) The authority seem to have uncritically taken for granted the Transport Statement made by the applicant which identifies only "2 specific sections where there are constraints where the passing of 2 hgv's simultaneously is a problem": "the section between the Post office and Junction by Condover School and the section approaching the Church Road junction". Condover resident refute this assessment and can provide extensive photo and video documentation to prove that HGVs (including trucks to/from the quarry) regularly mount the pavement not only in these 2 identified sections but all along the village centre, from the Village Hall to the new affordable houses (it's about 1/3 of a mile). This represents for the villagers (especially pedestrians) a critical road safety issue that has been completely ignored despite the many residents complaints over the years.

f) The mitigation measures proposed in this application are not at all sufficient or acceptable. For the section adjacent to the Station Road/Church Road junction, "it is proposed to set the kerb line back across the grassed island along Station Road". Both the applicant and SC Highways forget that it's a conservation area and no changes to the external appearance of the village are allowed. Condover residents disagree with the officer's opinion that cutting 1.1mt of the kerb would not change the appearance of the grassed triangle given that there is the old village water pump at the very centre of the triangle. Many residents think it will look stupid and fear that the pump will be knocked over by HGVs within weeks of this change being constituted. Therefore some conservation experts must be consulted.

g) The consideration of the "potential highway infrastructure benefits" for not warranting a highway objection is hugely overweighted given what the local community has in actual fact received so far in comparison to the nuisance and damages suffered.

h) It also appears that Highways England, the statutory consultee responsible for the A49, have not been consulted. The junction between the A49 and the road to Condover is on a 60mph stretch and is considered already busy and extremely dangerous by the local residents. The impact of the increased vehicular traffic exiting onto and off of this road needs to be assessed, and in particular the risks of heavily loaded vehicles turning north across a busy carriageway. In many similar situations the construction of an over or underpass has been a requirement to manage traffic safely, and this should be recommended. The additional traffic that has been promoted here does not allow for the impaired vertical visibility coming from Station Road onto the A49. The A49 sits up compared to Station Road, it a very dangerous junction and the additional traffic will aggravate the situation, therefore Highways England must be consulted. SC Highways

might think it's not a material change, but they should let Highways England know and decide.

The failure to consult Highways England about the impact of the application on highway safety represent a major fault: they should be submitted prior to any determination. Also the SC Conservation team should comment about i) the increased HGV transit through the conservation area of Conover village and over the Grade II listed bridge and ii) the proposed trimming of the grassed triangle between the Village Hall and the Grade II listed bridge.

Given that the Samdev requirements for a direct access to the A49 have been ignored and the various issues related to the NPPF, we reserve in case the application is passed, to check if this case would be suitable for Judicial Review.

Conclusions

Since 2015 the quarry operators have extracted up to 3.5x the amount they were permitted to extract per year, under the previous planning, without any sanction or impunity. How could they now be rewarded for flouting previous planning conditions with a new planning permission that doesn't take into account the requirements of the local plan and would more that double their current permitted production?

Why in 2018 did Shropshire Council grant planning consent (13/00336/EIA - 25/04/18) limiting the production to 50.000 tonnes per annum? The conditions at the time must have required that was the limit that the village could withstand. Now, consider that since then, in the last four years, many new houses have been built in the village (including 20 affordable two and three bedroom houses), all absorbed without a single improvement to the local highways apart from a short stretch of pavement from the new houses to the school that HVGs regularly mount to pass each other. Can the officers explain why the roads of Conover can now cope with more than two times the previously permitted production? Is it because the applicant by breaching the previous planning conditions has already tested the limits and no one has been injured, yet? Can the officers explain how they will ensure that these new proposals will not be ignored and we'll not see even greater tonnages passing through the heart of the village?

For the reasons stated above, CRAG object to the proposed application for development.

Item No.	Application No.	Originator:
6	21/03846/EIA	Case Officer

Case officer clarifications in response to CRAG representation:

Q - Is there any unfulfilled need of building materials in Shropshire?

A - The need for the mineral is set out in sections 6.4 – 6.10 of the committee report. As this is an allocated site there is a presumed need for the mineral and the application has come forward towards the end of the SAMDev plan period. It is not necessary to demonstrate that there is an unmet need. This policy test applies to unallocated sites (see full wording of Policy MD5 below).

Q - There have been fundamental changes in the circumstances of the local road network that have not been properly recognised by the authorities: i.e. the recent exponential village growth (over 50 houses in the last five years).

A – The Highway Authority is aware of the context of the application and has not objected.

Q – Highways England should have been consulted.

A – There is no need to consult the Highways England as the level of quarry traffic at the A49 junction will not exceed historic norms and, further, it is reduced by 30% relative to the previous application.

Q – Residents would question the accuracy of the traffic surveys.

A – The Highway Authority has not queried these figures and has compared the proposed levels with historic levels of traffic from the quarry.

Q – Why in 2018 did Shropshire Council grant planning consent (13/00336/EIA) limiting the production to 50,000 tonnes per annum?

A – The reason for this is addressed in 6.26 iv of the report. The 50,000tpa limit was not a requirement of the Highway Authority but was in response to objections from the local community and in recognition of the specialist nature of the mineral in the current extension area (fine mortar sand) which was considered to have a more limited market. In the event a competitor quarry temporarily closed and Gonsal quarry was also able to find some additional more varied mineral reserved beneath the existing plant site which were subsequently worked under previous consents. The quarry was the only local supplier for these minerals meaning that the level of demand for the mineral was much higher than was originally assumed.

Q - The quarry has been in breach of this limit.

A – Previous exceedance of the currently consented tonnage limit is not condoned, and the officer served a pre-enforcement letter on the applicant earlier this year. There are however extenuating circumstances which are addressed in 6.26 iv of the report. The applicant took action to transfer a bagging plant to their quarry at Morville near Bridgnorth and it is understood that levels of quarry traffic through Condover have since reduced.

Q - Roads are not big enough for two HGV to safely pass each other, SC should either find a suitable route or reject the planning application.

A – The physical characteristics of the quarry HGV route through Condover have not changed materially for the 55 years that the quarry has been using this route. The Highway Authority has not objected and the applicant has put forward mitigation measures including highway maintenance funding and proposals for a 20mph speed limit. In the absence of a Highway Authority objection it would be very difficult to defend a highway based refusal reason on appeal.

Q – There is no consideration in the application of the adverse noise and dust effects of quarry traffic passing through the Condover.

A – Objectors have not provided any evidence of significant / persistent noise or dust effects arising from quarry vehicle movements through the village. There has been no objection from the Council's Conservation or environmental health services. The quarry traffic would amount on average to 30% of total HGV movements along the quarry access route through Condover. No evidence has been provided that quarry traffic causes particular noise, dust or vibration issues relative to other HGV's and this is not the case at other Shropshire quarries.

Q - The trucks often hit garden walls, houses, barns roofs, and knock over traffic signs.

A – Photos of the quarry HGV route through Condover are provided at the end of this update report. There is no evidence of widespread damage caused by HGV's in these images, nor has this been observed during the officer's site inspection with the Highway Authority. The local community has not provided evidence of such alleged damage to either Authority.

Q – Damage is being caused to the Condover Conservation Area by quarry traffic.
 A – The Council’s Historic Environment team leader has reaffirmed that there are no objections to the proposals on heritage grounds and that any refusal based on heritage grounds would be difficult to defend at appeal (see 4.8b of the committee report). A photographic record of the HGV route through the Conservation Area is provide at the end of this update report.

Q – Great Crested Newts are at risk. Many live in lakes they want to dig in.
 A – The proposals are subject to a GCN license issued by Natural England and the quarry restoration scheme is designed to maximise habitat opportunities for GCN. The current application would deliver further biodiversity / habitat enhancements relative to the currently approved scheme.

Q – The local community has seen no evidence of the benefits of the 9p per tonne road maintenance levy. The roads are in an appalling state.
 A – Whilst some money has been paid into a ring-fenced account additional money is due from the existing workings (total £50k). Together with the up-front payment of £65k this would give a total of £115k which would be available to address road maintenance issues. The onus would be on the Highway AuthoStation Road and Church Roadrity to devise and plan a suitable scheme in consultation with the local community. Such funding would not be available without the quarry.

Q – The fact that constructing the new access to the A49 is not economically viable should be of no concern to the planning authority.
 A – This is not the case. The viability of delivering the alternative access is a material planning consideration which is likely to be tested in detail in the forthcoming planning appeal. The reasons why t is not viable for the current extension are set out clearly in section 6.23 of the officer report.

Q – Concern is expressed about the proposal to reduce a mini-island on the junction between Station Road and Church Road.
 A – This proposal has been removed from the current Transport Asessment.

Item No.	Application No.	Originator:
6	21/03846/EIA	Case Officer

Legal clarification on the status of the Development Guidelines accompanying SAMDev policy MD5

In section 6.4.5 of their Environmental Statement the applicant has cited the Asda vs Leeds City Council case as providing guidance on the implementation of SAMDev Policy MD5a which states that ‘Development of the allocated mineral sites identified on the Policies Map should be in accordance with relevant Local Plan policies and the development guidelines set out in this schedule. The development guidelines for the 2 allocations at Gonsal Quarry then advise as follows: ‘Development subject to:
 1. the creation of a new access to the A49 which would deliver significant local transport benefits over current access arrangements....

In section 6.4.4. of the Environmental Statement the applicant states that:
‘the development guideline above does not form part of the actual policy but is instead an indicative guideline providing criteria which the planning authority consider should be addressed in any planning application for the allocated site. Therefore, development criteria 1 is a material consideration to be weighed into the planning balance. Consequently, by not providing a new access arrangement directly onto the A49 it cannot be considered that the application is compliant with policy MD5b.

The applicant goes on to say (6.4.4):

'The interpretation of the word "should" as set out in SAMDEV Policy MD5b: Phase 2 Site Allocations has been tested at the Court of Appeal (Asda vs Leeds City Council) focused on the interpretation of paragraph 89 and 90 of NPPF. Asda claimed that in line with Para 90 of the NPPF the proposal 'should be refused'. The judge determined that 'should' is not an imperative meaning a proposal must be refused, rather a decision must still be made on whether benefit outweighs harm, see paragraph 36 from the appeal below.

"The policy we are considering in this case is a good example. Its language is simple. What it says is that planning permission "should be refused" in the circumstances it contemplates – including where the development proposed will have a "significant adverse impact" on a town centre. The words "should be refused" have a clear meaning, which requires no elaboration by the court. They do not mean "must be refused". The policy is not imperative. It does not dictate a refusal of planning permission whenever the development proposed is likely to have a "significant adverse impact" on the "vitality or viability" of a town centre."

The applicant advises that the Secretary of State for Housing, Communities and Local Government also commented as follows in relation to use of the term 'should be refused' at paragraph 25 of Asda vs Leeds City Council:

"Though not a party to these proceedings, the Secretary of State for Housing, Communities and Local Government took the opportunity given to him by Holgate J., as Planning Liaison Judge, by an order dated 7 June 2019, to assist the court on the issues of national policy raised in the claim. In written submissions made by his counsel on 8 July 2019, it was asserted that the words "should be refused" in paragraph 90 of the NPPF "should be given their ordinary meaning in [their] context", which is that "where a proposal causes ... a significant adverse effect on town centre vitality it should be assessed as contrary to national policy on ensuring the vitality and vitality [sic] of town centres" and "[this] would, in the absence of any other considerations, provide a basis for refusal of the application" (paragraph 16 of the submissions); that "[paragraph] 90 read in context does not mean that in any case where ... the proposals are likely to have a significant adverse effect on planned investment or town centre vitality and viability the application must be refused", and "[in] this sense, it is not mandatory" (counsel's emphasis) (paragraph 17); and that "[such] an interpretation would ... not give "should" its ordinary meaning", "... be inconsistent with the duties under section 38(6) [of the 2004 Act] and [section] 70(2) [of the 1990 Act] to have regard to all material considerations" (paragraph 18)".

The applicant states (6.4.7 of the ES) that 'it follows that 'applying the same interpretation of 'should', as was established by the Asda Stores v Leeds City Council case means that not all applications which do not abide by these guidelines 'must' be refused.

Condover Parish Council has challenged the relevance of the Asda Stores v Leeds City Council case to Gonsal Quarry. The claim that 'Policy MD5b clearly states further extension of the Gonsal Quarry site will only be acceptable with the creation of a new access to the A49. The word 'should' is not used'. This is not correct. There is no reference to Gonsal Quarry in policy MD5. The proposed allocations at Gonsal are instead listed in a schedule accompanying the policy which includes the development guidelines and is prefaced:

*Development of the allocated mineral sites identified on the Policies Map **should** be in accordance with relevant Local Plan policies and the development guidelines set out in this schedule.*

The distinction between a policy and its explanatory text is clarified in *R (Cherkley Campaign Limited) v Mole Valley District Council* [2014] EWCA Civ 567. Lord Justice Richards, who delivered the leading judgment in the Court of Appeal, drew a distinction between the policies themselves and explanatory text. He said that he did not think that a development that accorded with the policies in the local plan, could be said not to conform with the plan because it failed to satisfy an additional criterion referred to only in the supporting text, even if the supporting text indicates how the policies will be implemented.

In a more recent decision, *Chichester District Council v Secretary of State for Housing, Communities and Local Government & Anor* [2018] EWHC 2386 (Admin), the relevant plan had identified an underlying aim of two of the policies, as being to avoid development to the north of a particular level crossing in order to avoid traffic congestion. That aim was not explicitly part of either of the two policies. The Court held that the planning inspector did not err in law in drawing a distinction between the aim, on the one hand, and the policies themselves. The judge found that because the limitation in terms of the location of the development was not expressed in policies 1 and 2, it could not properly be said that any proposed development outside the identified area to the south of the level crossing or indeed anywhere outside the settlement boundary and specified areas, conflicted with the neighbourhood plan.

The supporting text to Policy MD5 imposes a development guideline that the proposal must create a new access to the A49, which the development proposal does not. Relying on this supporting text to defend the forthcoming appeal has the following problems:

- i. This requirement is only found in the supporting text to the policy and not the policy itself. Having regard to the legal position of supporting texts (per Cherkley above), this cannot prevent compliance with the development plan overall;
- ii. The requirement is trying to secure a benefit and not prevent a harm and thus it cannot justify a refusal.

In conclusion the development guidelines accompanying Policy MD5(2) are guidelines and do not form part of the policy itself. Whilst they are a material consideration, they do not have the same weight as the policy. Use of the word 'should' in the introductory schedule accompanying the development guidelines confirms that compliance with the guidelines is not a 'must' and that a development proposal can still comply with the development plan policy overall is an element of the development guidelines (such as construction of a new access onto the A49) is not complied with. For the avoidance of doubt the full wording of the policy and the supporting text relevant to Gonsal Quarry is set out below. Officer advice is that whilst the proposals do not comply fully with the development guidelines, they do comply with Policy MD5 and with the development plan overall.

Given the absence of objection from the Highway Authority and other consultees and the fact that the development guidelines do not represent an obligatory requirement of policy officers advise that refusal on highway grounds would be difficult to defend at appeal.

MD5: Sites for Sand and Gravel Working

Wording of Policy:

1. The supply of sand and gravel during the Plan period should be provided in the first instance from existing permitted sites and then from the development of mineral working at the site identified on the Policies Map and allocated in Schedule MD5a below.
2. Where monitoring demonstrates that the further controlled release of sand and gravel reserves is required, then the subsequent development of mineral working will be considered at the sites identified in Schedule MD5b below. Applications for earlier development of these sites will be considered on their merits. In considering any such application, particular regard will be paid to:
 - i. the need to control potential cumulative impacts associated with concurrent or sequential mineral extraction operations in a specific area, including through the imposition of output or timescale restrictions where these are necessary to reduce the potential for market oversupply and cumulative adverse environmental impacts;
 - ii. whether the early release of the site would enhance sustainability through meeting an identified local need.
3. Proposals for mineral working falling outside the allocated areas will be permitted where developers can demonstrate that:
 - i. the proposal would meet an unmet need or would prevent the sterilisation of the resource; and,
 - ii. the proposal would not prejudice the development of the allocated sites; or,
 - iii. significant environmental benefits would be obtained as a result of the exchange or surrender of existing permissions or the site might be significantly more acceptable overall than the allocated sites, and would offer significant environmental benefits.

Wording of relevant supporting text:

Schedule MD5a: Phase 1 Site Allocations:

Development of the allocated mineral sites identified on the Policies Map **should*** be in accordance with relevant Local Plan policies and the development guidelines set out in this schedule.

(* *emphasis by officer*)

Allocated Sites - Development Guidelines- Gonsal extension (Condover)

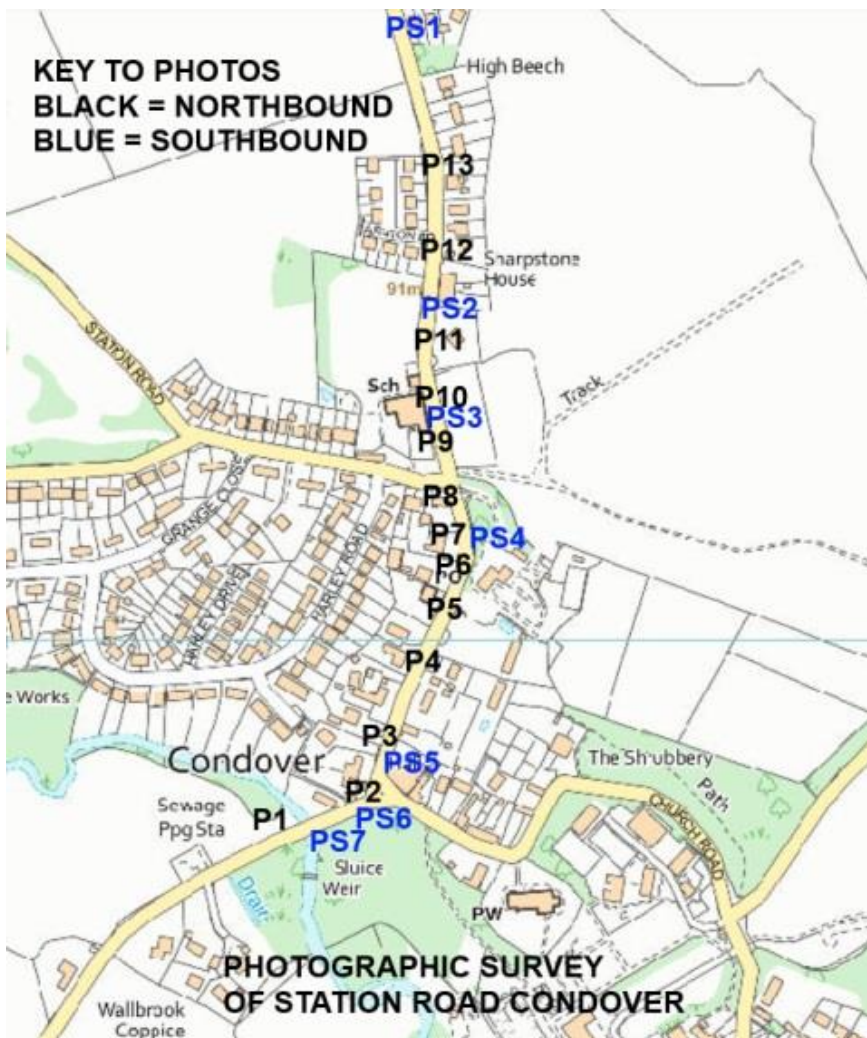
Development subject to:

1. the creation of a new access to the A49 which would deliver significant local transport benefits over current access arrangements;
2. further assessment and appropriate mitigation measures to address potential impacts on residential amenity for properties which would be in the prevailing wind (dust and noise issues would require mitigation);
3. further assessment and appropriate mitigation measures to address potential impacts on protected or priority habitats and species and ecological networks;
4. a site restoration scheme which will be designed to deliver significant wildlife and recreation benefits;
5. further assessment and appropriate mitigation measures to address potential impacts on the setting of historic **Page 41** assets, including Condover Hall

listed building and school (700m) and Condover registered park and garden (100m).

Item No.	Application No.	Originator:
6	21/03846/EIA	Case Officer

The succeeding section provides photographic details of the HGV route through Condover from Gonsal Quarry and shows the route in relation to the Condover Conservation Area



NORTHBOUND VIEWS ON STATION ROAD



P1 (Note width restriction of listed Con Dover Bridge)



P2 (Note no evidence of damage to stone wall at this pinch point)



P3 (Note Grade II listed timber framed Rose Cottage in middle of picture)



P4



P5



P6



P7



P8



P9 (Note evidence of verge erosion opposite school)



P10 (Note parking outside of designated areas restricts carriageway)



P11 (Note informal protection to prevent verge erosion)



P12



P13

SOUTHBOUND VIEWS ON STATION ROAD



PS1



er Cricket Club

PS2



PS3



PS4



PS5



PS6 (Note restricted forward visibility opposite mini-island)



PS7

CONDOVER CONSERVATION AREA AND GONSAL HGV ROUTE



Note: Eight listed structures out of a total of 41 within the Conservation Area are located in the vicinity of the quarry HGV route. Four of these adjoin the route:

- Condover Bridge (Photo P1 – Grade II listed);
- A milestone set in front garden wall of The Old Vicarage (Photo P2 – Grade II listed);
- Stables at The Old Vicarage (Photo PS7 – Grade II listed);
- Rose Cottage (Photo P3 – Grade II listed).

The other 5 are set back within their curtilages.

Analysis of the photos above confirms that there are pinch points where the road narrows and/or forward visibility is restricted. This is notably at:

- Condover Bridge (P1). This is not weight restricted;
- The junction with Church Road (P2, PS6);
- Condover primary school (P8, P9, P10, PS2, PS3).

There does not appear to be any evidence from the above survey, the officer's site inspection or objector's correspondence that HGV traffic is physically damaging any heritage assets or is affecting the condition of the public highway in a way which exceeds what would be expected from normal wear and tear on a road of this nature. It is acknowledged however that such evidence may not be immediately apparent from photographic imagery at a street view scale.

With regard to the primary school the applicant is proposing not to despatch HGV's from Gonsal Quarry during peak school dropping off and picking up times. The officer has advised the applicant that this should comprise a 30-minute interval in the morning and afternoon to be agreed with the Highway Authority and the Parish Council.

A 30mph limit currently applies through the village. The applicant is proposing to make an up-front payment of £65k towards highway maintenance / improvements on the quarry HGV route through Condover. This is in addition to £50k which is currently due and/or has been paid into a ring-fenced highway account under the terms of the existing legal agreement. This would be sufficient to fund delivery of a reduced 20mph speed limit and to undertake general highway maintenance improvements along the route.