

## APPENDIX 1

### FLINTSHIRE COUNTY COUNCIL

**REPORT TO:** **PLANNING AND DEVELOPMENT CONTROL COMMITTEE**

**DATE:** **22 JUNE 2016**

**REPORT BY:** **CHIEF OFFICER (PLANNING AND ENVIRONMENT)**

**SUBJECT:** **VARIATION OF CONDITION NO. 17 ATTACHED TO PLANNING PERMISSION REF 00/20/570 TO INCREASE PRODUCTION LIMIT AT PANT Y PWLL DWR QUARRY, PENTRE HALKYN**

**APPLICATION NUMBER:** **054768**

**APPLICANT:** **CEMEX UK MATERIALS LIMITED**

**SITE:** **PANT Y PWLL DŴR QUARRY. PENTRE HALKYN, HOLYWELL**

**APPLICATION VALID DATE:** **23 DECEMBER 2015**

**LOCAL MEMBERS:** **COUNCILLOR COLIN LEGG**

**TOWN/COMMUNITY COUNCIL:** **HALKYN COMMUNITY COUNCIL**

**REASON FOR COMMITTEE:** **LEGAL AGREEMENT REQUIRED**

**SITE VISIT:** **NOT REQUESTED**

#### **1.00 SUMMARY**

- 1.01 Cemex UK Materials Limited have applied under Section 73 of the Town and Country Planning Act 1990 to vary Condition No.17 of the deemed planning permission at Pant y Pwll Dŵr Quarry, Pentre Halkyn to effectively increase the tonnage output from the Quarry from a limit of 800,000 tonnes per annum, as measured over a period of three consecutive years, to a limit of 1.2 million tonnes per annum, as measured over a period of three consecutive years.
- 1.02 This application is being applied for retrospectively as the applicant has been exceeding the three yearly average annual tonnage for some years. This application has been submitted at the request of the Local Planning Authority in order to regularise this.

- 1.03 The main issues being considered in order to determine this planning application relate to the impact on the highway network and amenity in terms of potential noise, dust and blasting from the quarry operations as a result of an increase in exported limestone aggregate products.

**2.00 RECOMMENDATION: TO GRANT PLANNING PERMISSION, SUBJECT TO THE FOLLOWING:-**

- 2.01 The applicant entering into a Section 106 agreement or unilateral undertaking under the terms of the Town & Country Planning Act 1990 (as amended) or to provide an earlier payment to:-

- a) Provide a commuted sum of £17,000 to Flintshire County Council Highways Department to undertake road re-surfacing works with an anti-skid surface at the junction of the B5123 and Bryn Emlyn, Pentre Halkyn.
- b) Provide a commuted sum of £1,000 to Flintshire County Council Highways Department to make repairs to a fence adjacent to the Cattle Grid on Martin's Hill, Pentre Halkyn.

- 2.02 Conditions including:

1. Approved plans
2. Plans to be kept on site
3. Duration of permission
4. Time limit for completing the restoration of site
5. Revised restoration should the site close prematurely
6. Interim restoration scheme
7. Notification of temporary suspension
8. Specified Access Road
9. Maintenance of access road
10. No material to be deposited on the highway
11. Sheeting of exporting HGVs
12. Implementation of five year working programme
13. Update of working programme at least every five years
14. Notification of overburden stripping
15. HGV number limitations
16. Hours of operation
17. Dust control and monitoring Action Plan
18. Noise control and monitoring Action Plan
19. Day time noise limits
20. Noise limits for temporary working
21. Blast Monitoring Action Plan
22. Blast vibration limits
23. No secondary blasting
24. Protection of water course
25. Pollution prevention
26. Surface water management
27. Removal of permitted development rights
28. Maintenance of boundary treatment

- 29. No quarry waste to be removed from site unless it is an approved adjacent sites
- 30. Submission of final restoration and outline aftercare scheme
- 31. Tree and hedge planting and protection
- 32. Aftercare scheme
- 33. Annual aftercare meeting and reporting

- 2.03 If the Section 106 Agreement, unilateral undertaking or earlier payment (as outlined above) is not completed/paid within six months of the date of the Committee Resolution, the Chief Officer (Planning and Environment) be given delegated authority to REFUSE the application.

### **3.00 CONSULTATIONS**

- 3.01 *Local Member: Councillor Colin Legg* – at the time of writing the report no comments have been received.
- 3.02 *Halykn Community Council* – supports the application. Providing the applicant agrees and takes necessary precautions to mitigate environmental damage and impact in the locality, including the transportation aspect.
- 3.03 *Neighbouring Ward Councillor Matt Wright* is very concerned about this proposal. The quarry is already exporting more than they are permitted. Concerns include the dust emitted from the quarry which is transported from vehicles onto the public highway which cause a nuisance. Councillor Wright has tried to be supportive towards Cemex as a local employer but the various dust problems from the site and the constant traffic are upsetting the local residents. There are a number of infrastructure projects in line for years to come, therefore it would seem that the company will be busy in the future and Councillor Wright would like to see some fairness. If Cemex wish to proceed sensibly, they really need to look at assisting with the existing road network. There is no pavement on most of the route through the village making the route dangerous and support for capital works are needed. There is also need for strict conditions addressing dust, noise, blasting and other issues and modernising the site further. Things are currently not up to the mark and more work being permitted requires a re-think of the standards at this site. It is entirely reasonable of the residents to expect this, who under the circumstances have been more than understanding. Whilst the proposed conditions are an improvement to the existing consent in terms of controlling the operational impacts of the quarry, Councillor Wright cannot support the proposal as it would increase vehicle movements to an unacceptable level, although it is noted that the proposed level may not be reached. Furthermore, Councillor Wright would prefer to see a later start time as HGVs passing through Pentre Halkyn at 6am can be intrusive to the residents.

- 3.04 *Neighbouring Ward Councillor Jim Falshaw* at the time of writing the report no comments have been received.
- 3.05 *Brynford Community Council* were consulted as neighbouring Community Council and do not object to the planning application.
- 3.06 *Ysceifiog Community Council* were consulted as neighbouring Community Council and do not object to the application but raised concerns as to the potential impact the increase of vehicle movement will have on adjacent communities. The Community Council request that improvements to highway maintenance should be provided to the roads used by heavy goods vehicles and that the recordings of vehicle movements should be introduced in order that communities impacted can be identified for future reference for such things as application into the Aggregate levy fund.
- 3.07 *Head of Assets and Transportation*  
It is difficult to assess the extent of the impact that this proposal would have on the operation of the highway; a condition related to the output of the quarry, averaged over a three year period provides little or no control to the flow of traffic during a particular time.
- 3.08 The Transport Assessment, Table TA4.1 indicates a steady increase in annual export tonnage over the past six years. Despite this increased output, Section 3.3 of the Transport Assessment identifies that this has not had a significant impact on the safe operation of the highway and that there were no recorded highway incidents that involved quarry traffic. There have been no reports of exceptional maintenance issues caused by the passage of quarry traffic during this period.
- 3.09 The imposition of a revised planning condition may prove to be more effective in managing the quarry output and hence traffic on the highway, and on that basis I have no objection to the proposal.
- 3.10 *Head of Public Protection* – No observations made.
- 3.11 *Cyfoeth Naturiol Cymru/Natural Resources Wales (NRW)*  
Based on the information provided to date, NRW does not object to the proposed variation of condition No. 17, however have the following comments in relation to protected Sites at the site which include Halkyn Common and Holywell Grasslands SSSI and Halkyn Mountain / Mynydd Helygain SAC.
- 3.12 The quarry is notified as a SSSI for the mineralogical interest which is exposed within the quarry faces. NRW does not consider that the proposed variation in the condition would adversely affect the geological interest of the SSSI.

#### **4.00 PUBLICITY**

4.01 This application was advertised by way of press and site notice and neighbour notification letters were dispatched to neighbouring residential properties.

4.02 During the consideration of this application a total of 16 letters of objection have been received in response to the consultation on this application. The main planning based representations in objection that are material to the determination of this application include:

- The proposal would result in an increase in HGVs
- Local roads cannot accommodate two passing HGVs
- Drivers use private driveways as passing bays
- The proposal suggests that the vehicles are larger, therefore impounds existing problems of the narrow local roads
- Damage to local roads due to continuous/frequent HGV use
- Local roads are not suitable and do not have the capacity for the increase in HGVs
- Cattle grids are damaged by continuous HGV use; an increase in production would exacerbate this.
- HGV movement over cattle grids generate noise and vibration which would be increased with an increase in HGV movement
- The proposal presents real road safety concerns for the village of Pentre Halkyn; there are no pavements, and HGV drivers have little regard to speed limits and residents
- Road improvements should be made; the road should be widened and pavements should be constructed, the road surfacing should be improved to prevent wheel spinning at the junction of Springfield Hill and Martins Hill
- There are no traffic calming features on the local roads
- The quarry company should construct a bypass to avoid the village of Pentre Halkyn or source an alternative route
- The proposal has a negative impact on the quality of life of the residents of Pentre Halkyn
- Breaching the conditions for 5 years with no action despite complaints; it should not be considered retrospectively
- The proposal would result in the increase in pollution on the roads in the locality from dust and emissions from HGVs causing damage to health of local residents
- Increase in noise from quarry operations and HGV traffic which results in disturbing sleep of neighbouring residents
- Increase in blasting will cause more damage to neighbouring properties
- An increase in production would result in an increase in working hours therefore hours of operations should be reviewed; 6.00 am opening time is too early and disturbs sleep, Saturday opening hours should be reviewed to open at 7.30am
- The wording of the condition as an average over 3 years allows for further scope to increase output. Should it be increased there would be even additional scope to increase

4.03 Other issues have been raised by local residents that are material to another undetermined planning application which has been submitted by Cemex at the site which involves the construction of an overburden storage mound (reference 055218). These issues are not material to this planning application and are not considered within this report.

4.04 The applicant also held a pre-application public exhibition event on 1 December 2015.

## **5.00 SITE HISTORY**

5.01 Planning permission for the working of minerals at Pant y Pwll Dŵr Quarry was first granted on 15 November 1948 (Ref. D40). Since then a number of extensions and modifications at the Quarry have been granted: Reference P72 (extension) 1 May 1956

- Reference 163/67 (extension) 29 February 1968
- Reference 3/HA/658/80 (extension) 19 January 1982
- Reference 3/316/88 (modification of working) 5 December 1988

5.02 In November 1995 planning permission was granted for a series of proposals primarily seeking approval of a number of detailed matters for the future development of the site in relation to revisions of the quarry working scheme, relocation of the quarry processing plant and landscaping and restoration.

5.03 On 30 May 2000 the quarry operator made an application for the determination of new conditions under the requirements of the Environment Act 1995. This application proposed a scheme of conditions for the Council to consider. However, the Council did not determine this application within the statutory time period. As a result, in accordance with the provisions of the Environment Act 1995, and in particular paragraph 9(9) Schedule 13, the 'deemed' approval took effect on 31 August 2000 (Ref 00/20/570 which is the extant planning permission to which this Section 73 application relates).

5.04 Planning permission was granted on 10 June 2003 for a new access road to the quarry under reference 031327 and subsequently varied by permission 047245 on 3 November 2010 to allow for additional overburden to be deposited on an existing screen bund.

5.05 Planning permission was granted on 11 June 2003 for revisions to the approved processing plant under reference 031328.

5.06 By February 2016, the quarry operator was required to make another application for the determination of new conditions under the requirements of the Environment Act 1995 to review mineral planning permissions ever 15 years. However, pursuant to the provisions of paragraphs 38 and 153 of MPG14, the quarry operator requested that the date by which an application must be made be postponed until the 31<sup>st</sup> December 2016. This request was made to allow the Minerals

Planning Authority sufficient time to determine this planning application. The determination of which may render the submission of a schedule of conditions unnecessary as there is the opportunity to impose any condition in which the Planning Authority deem necessary.

- 5.07 In March 2016, the quarry operator submitted a planning application for the creation of an overburden storage bund (reference 055218). This application is under consideration and undetermined.

## **6.00 PLANNING POLICIES**

### **6.01 LOCAL PLANNING POLICY**

Flintshire Unitary Development Plan (Adopted September 2011)

STR2 – Transport and Communities

GEN1 – General Requirements for Development

AC13 – Access and Traffic Impact

AC14 – Traffic Calming

MIN1 – Guiding Mineral Development

MIN3 – Controlling Minerals Operations

### **6.02 GOVERNMENT POLICY/GUIDANCE**

Planning Policy and Guidance

Planning Policy Wales Edition 8 (including Minerals Planning Policy) (2016)

Technical Advice Note 5 – Nature Conservation and Planning (2009)

Technical Advice Note 11 – Noise (1997)

Technical Advice Note 18 – Transport (2007)

### **6.03 Minerals Planning Policy and Guidance**

Minerals Technical Advice Note 1: Aggregates 2004

Minerals Planning Guidance Note 11: The Control of Noise at Surface Mineral Workings, 1993

Minerals Planning Guidance Note 14: Review of mineral planning permissions

## **7.00 PLANNING APPRAISAL**

Introduction

- 7.01 The details of the proposed development will be outlined below, along with a description of the site and location, site constraints and the issues that will be assessed within the main planning appraisal.

### ***Details of Proposed Development***

- 7.02 Cemex UK Materials Limited have applied under Section 73 of the Town and Country Planning Act 1990 to vary condition No.17 of the deemed planning permission at Pant y Pwll Dŵr Quarry, Pentre Halkyn to effectively increase the tonnage output from the Quarry.

- 7.03 Condition No.17 states: *“The quantity of processed limestone aggregate leaving the site shall not exceed an equivalent level of*

*800,000 tonnes per annum as measured over a period of three consecutive years.”*

- 7.04 The application seeks to increase the three yearly average annual tonnage from a limit of 800,000 tonnes per annum, as measured over a period of three consecutive years to a limit of 1.2 million tonnes per annum, as measured over a period of three consecutive years.
- 7.05 This application is being applied for retrospectively as the applicant has been exceeding the three yearly average annual tonnage for some years (since 2011). The application has been submitted at the request of the Local Planning Authority in order to regularise this.

***Site Description and Location***

- 7.06 Pant y Pwll Dŵr Quarry is located 1km to the west of the settlement of Pentre Halkyn and 3km to the east of Babel. The A55 North Wales Expressway is located 1.5km to the east of the site, with access to this route from the quarry gained via local unclassified roads through Pentre Halklyn, linking to the B5123 and connecting to the A55 at the Springfield Interchange.
- 7.07 Due to the quarry's proximity to the A55 trunk road it is considered to be an important strategic facility supplying limestone products to both the North Wales region and the North West of England.

***Relevant Planning Constraints/Considerations***

- 7.08 The extant planning permission reference 00/20/570 is a 'deemed consent' and therefore Condition No.17 was suggested by RMC; the quarry operator at that time. It is important to note that the Mineral Planning Authority did not impose this condition, or require a limit on output; it was offered by the applicant based on the operational output and capacity at that time, in the year 2000. Many quarries in Flintshire do not have a quarry output limit imposed as a condition as other conditions control the impacts of the quarry operations.
- 7.09 The Quarry site lies entirely within the Halkyn Common and Holywell Grasslands SSSI and adjacent to the Halkyn Mountain / Mynydd Helygain SAC. However, it is considered that the proposed application and increase in tonnage output would not give rise to a significant effect on the nearby SAC or SSSI.
- 7.10 Should planning permission be granted, as a new development consent would be issued, the Mineral Planning Authority has the ability to impose conditions that would meet the tests of Circular 11/95; 'The use of conditions in planning permissions'. Furthermore, any new planning permission granted would effectively substitute the need for the review of conditions as required by the Environment Act 1995. This planning application provides the review mechanism to ensure that the planning conditions are up to date with current



guidance, would meet the tests of Circular 11/95, and fit for purpose. A new development consent would render the submission of a schedule of new conditions unnecessary.

### ***Monitoring and Enforcement***

- 7.11 Local residents have expressed concerns that the Mineral Planning Authority has allowed this breach of condition to occur, and have suggested that planning permission should not be granted retrospectively to allow the increase in exportation.
- 7.12 It was drawn to the Council's attention that the average three yearly output limit was being exceeded in December 2012 when the Council undertook a chargeable monitoring visit which monitors each condition of the planning consent. It had not become apparent until then due to the retrospective manner in which the condition operates. The Mineral Planning Authority discussed mechanisms to resolve this with the operators. The Quarry operators analysed their records to establish if the activity could be considered lawful under the provision of section 191 of the Town and Country Planning Act for established lawful use. It was apparent that this could not be demonstrated and the Mineral Planning Authority formally wrote to Cemex in January 2014 with regards to the continued breach of condition. It was accepted by the Mineral Planning Authority that Condition No. 17 does construe a degree of ambiguity, and it was noted that the Mineral Planning Authority was required to wait for the period to time to lapse (over three years) to establish whether it was expedient to enforce.
- 7.13 However, the Mineral Planning Authority considered that the most appropriate way forward was in the form of remedial regulatory action. As such, it was suggested that a Section 73 application be submitted by the operator to vary the condition. The Mineral Planning Authority therefore invited the quarry company to submit a planning application to regularise the situation and this planning application was submitted.

### **Issues**

- 7.14 ***Principle of Development and suitability of location***  
The principle of extracting limestone in this site has been deemed acceptable by virtue of the historical mineral working at the site which planning permission was first granted in 1948. Subsequent planning permissions were granted which provides evidence that mineral extraction at this site represents an appropriate and established land use for this site. Furthermore, mineral extraction can only take place where the mineral is found to occur. As stated previously, the quarry site is located close to strategic and regional road networks.
- 7.15 ***Need for aggregate***  
Minerals Technical Advice Note 1: Aggregates states that it is

essential to the economic and social well-being of the country that the construction industry is provided with an adequate supply of the materials it needs but not to the unacceptable detriment of the environment or amenity. Due to its location, it is considered that Pant y Pwll Dŵr Quarry has a key strategic role in limestone product supply. The proposal does not seek any additional reserves. The permitted reserves at the site contribute to the County's landbank in which the figures within the Regional Technical Statement are based and the managed aggregate system in the Region.

**7.16     *Need to vary Condition No.17 and increase output limits***

Over recent years the quarry operator has been experiencing strong demand for the aggregate products produced by Pant y Pwll Dŵr Quarry. There are a number of local and national factors contributing to this situation including economic growth, a reduction in production capacity in Flintshire and north east Wales due to a number of limestone quarries in the region closing and put to restoration, or mothballed. Also, advances in HGV technology and legislation has resulted in larger vehicles being permitted to export material from the site and as a result, more material can be exported per HGV trip as payloads have increased.

7.17     As a result, the quarry operators have been unable to satisfy the demand for its products within the confines of the limits within condition No.17, although the extent to which production has exceeded the three year average of 800,000 tonnes per annum has only become wholly apparent during 2009-2011 given the retrospective manner in which the condition operates, when the three yearly average reached 813,793. Nevertheless, the condition has been breached since 2011. Since then, production from the site and exports have increased gradually with a peak in 2014, with a slight decline last year.

7.18     The applicant seeks to increase the limit on production from 800,000 tonnes per year, as an average measured over three preceding years to 1.2 million tonnes per annum, as measured over a three yearly average. With this proposed increased, it is not expected that sales of processed limestone would increase over and above that which has been achieved in the last three years, rather than annual sales would be more consistently reach 1.1 to 1.2 million tonnes per annum, each year, as opposed to wider variations in tonnage experienced in the past. As a consequence, it is not expected that HGV numbers, when compared to that experienced in the recent past, would increase as a result of the application. Number of movements currently experienced would become more consistent year on year. The analysis of HGV movement associated with this proposal will be explored in more detail in the following section.

**7.19     *Highways, Traffic, Transportation and Access***

An independent Transport Assessment to determine the likely impacts

of the proposal has been submitted to support the application. The assessment concluded that the proposed revised condition and increase in the output of the quarry would not result in a noticeable impact on operational, or environmental conditions on the local road network linking the quarry to the A55. As a result, it concluded that no local highway network improvement would be required to facilitate the development proposed.

- 7.20 A review of the historical weighbridge data for the quarry has demonstrated that annual payloads of export movements have increased over time. The move to higher payloads has effectively managed overall HGV demand by the site, by resulting in fewer vehicle movements per tonne. Essentially, whilst export levels have increased, larger vehicles have resulted in more materials being exported per load. Should export levels at the quarry be restricted to below market requirements, it would likely result in the need for a local level of demand to be satisfied by more remote facilities which could result in more HGV miles travelled for the transportation of limestone products.
- 7.21 The submitted Transport Assessment which supported the application, identified the existing road network operates within no existing capacity, congestion or safety issues. Export levels in excess of the current restriction have already occurred without any material impact on the operational safety of the local highway network. Nevertheless, concerns have been raised by local residents in relation to the increase in large HGVs that would result from the proposal.
- 7.22 Concerns have been made in relation to the lack of traffic calming measures. It is considered that the nature of the existing local highway network linking the site to the A55 already exhibits a number of natural traffic calming features which encourage appropriate driving conditions such as narrow road widths and steep inclines.
- 7.23 Local residents and Councillor Wright have suggested that a footpath should be provided to improve pedestrian safety. Until recently a footpath improvement scheme to provide a 2 metre wide footway from the Springfield Hotel to Greenlands on Pentre Road was included within the Council's Strategic Highway Improvement Schemes. However, as the route did not form part of the strategic highway network, in March 2016, the Council's Cabinet agreed to remove the scheme from the Scheme, as it has not been possible to implement any further elements of the scheme due to budgetary constraints and the lack of appropriate grant funding for schemes of this nature.
- 7.24 The evidence provided within the Transport Assessment includes safety records for this section of the highway network which highlights no quarry HGV related accident events within the past 10 years. A search of accident data reveals no significant history of incidents related to the previously high levels of traffic generated by the quarry.

It is therefore considered that there would be no requirement for additional traffic management features to support ongoing operation of the quarry under the proposed export threshold. Furthermore, there is insufficient width within the existing highway to deliver an appropriate scheme and this would therefore be reliant on land in third party ownership. Due to the topography of the land it would require major engineering works and retaining walls for it to be feasible, making a project such as this very costly. The Council could not require the quarry operator to construct a footway as there are no material grounds for requiring this.

- 7.25 Local residents have raised concerns in relation to vehicles 'wheel-spinning' at the junction with Springfield Hill (B5123) and Bryn Emlyn as HGVs are often required to stop at this junction before turning right. On occasions accelerating HGVs are finding a problem with low grip levels and resulting in wheel-spinning. As stated previously, there is no evidence to support the requirement for highways improvements or evidence of quarry related traffic causing undue wear and tear to the fabric of the highway. Furthermore, there are other HGVs on the road network which are not associated with the applicant's quarry. However, the wheel-spinning of vehicles has given rise to concerns raised by residents in relation to the noise disturbance that this causes, especially in the early hours of the morning before the quarry opens. Therefore, to try to reduce wheel-spinning and the associated noise concerns, the applicant has agreed to pay a commuted sum of £17,000 to the Council Council's Highways Department to undertake road re-surfacing with an anti-skid surface. It has been agreed that these works would be undertaken by the County Council, outside of the quarry's operational hours. The works would need to be completed within 12 months of the date of the legal agreement. The payment of the community sum would be secured by unilateral undertaking via Section 106 of the Town and Country Planning Act.
- 7.26 Local residents have also expressed concerns in relation to the increase in quarry HGVs causing damage to the cattle grids in the common. It has recently been reported that a fence adjacent to a cattle grid has been struck by a HGV. Whilst it is understood that the incident took place on a Sunday when Pant y Pwll Dŵr Quarry is closed, as a gesture of good will, the applicant is prepared to contribute a sum of £1,000 to repair the fence adjacent to the cattle grid. However, it should be noted that the applicant would not accept any ongoing maintenance liability or responsibility for the damage. As with the resurfacing works, the repairs must be completed within 12 months of the date of the legal agreement.
- 7.27 Local residents have suggested that the plans to construct a by-pass should be pursued so that the quarry vehicles would be diverted away from Pentre Halkyn. In 2007, the quarry operators submitted a Scoping Request to the Council for the construction of a by-pass. Unfortunately, this project is considered to be financially and

practically unviable at this present time. It would also involve third party land which the applicant does not have control over. It is considered that the proposal to increase the output at the quarry would be acceptable without the construction of a by-pass as there is sufficient capacity on the existing highway network.

- 7.28 Despite this increased output, the Transport Assessment identifies that this has not had a significant impact on the safe operation of the highway and that there were no recorded highway incidents involved quarry traffic. Furthermore, there have been no reports of exceptional maintenance issues caused by the passage of quarry traffic during this period. Whilst the exportation of limestone material has increased, payloads of HGVs transporting the material have also increased resulting in fewer vehicles per tonne exported. Furthermore, export level would not exceed that already experienced in recent years with no significant impact on the highway in terms of safety, incidents or maintenance.
- 7.29 Whilst the Council's Head of Assets and Transportation does not object to the proposed increase in output levels at the quarry, the imposition of a revised planning condition to control the number of vehicles leaving the quarry may prove to be more effective in managing the quarry output, and hence traffic on the highway. The retrospective manner in which the condition operates renders the monitoring and enforcing of this condition problematic. This has been demonstrated as it is not possible to ensure compliance or highlight a breach until three consecutive years have passed. It could be argued therefore that such condition, should it be imposed by the Mineral Planning Authority would not pass the tests set in circular 11/95, as it would not be enforceable and it is not precise. It does not provide the Mineral Planning Authority with any level of control. As stated previously, as the consent was 'deemed', the neither the Mineral Planning Authority nor the Highway Authority requested such a condition be imposed; it was offered by the applicant based on the operational output and capacity at that time in the year 2000.
- 7.30 The imposition of a revised planning condition to control actual vehicle numbers may prove to be more effective in managing the quarry output, and hence traffic on the highway. This would also provide the Mineral Planning Authority with a greater level of control. The current wording would allow for excessive levels of output in one year which may cause congestion and problems on the highway and unacceptable levels of dust and noise for example, but the condition would not be breached as long as the export levels in subsequent years were within the confines of the limits of the three yearly average. Furthermore, as stated previously this mechanism of control is not immediately effective and a period of time would have to pass to establish if there had been a breach of planning control. The planning application provides maximum daily vehicle movements in one day since 2009; the highest being 387 export vehicles in 2014. However

the current way in which the condition operates would allow for a much higher daily vehicle movement. Furthermore, the quarry has demonstrated that it can operate at this level without cause for concern in terms of highway safety or maintenance issues.

- 7.31 It is considered therefore, that it would be more effective and appropriate to remove Condition No.17 and replace it with a maximum daily vehicle number rather than revising the average output level. Having analysed the data submitted within the Transport Statement, and using the statistics provided by the Quarry associated with their previous export output rate and figures, it is considered reasonable to enforce a daily week day HGV limit of 600 HGV movements (300 in and 300 out) per week day, and restrict HGV movements to 300 (150 in and 150 out) on Saturdays with no HGV movements on Sundays or public/bank holidays. The condition would also state that in any 12 months period the quantity of processed limestone aggregate leaving the site shall not exceed 1.2 million tonnes.
- 7.32 This condition would be enforceable unlike the existing condition. It would provide the applicant with certainty and the Mineral Planning Authority with a condition that could be enforced, providing certainty for the local community. The Head of Assets and Transportation supports the change from a tonnage limit to a daily HGV limit.
- 7.33 Ysceifiog Community Council suggested that the recordings of vehicle movements should be introduced in order that communities impacted can be identified for future reference for such things as application into the Aggregate levy fund. The Quarry company do not as a matter of course record the routes of all vehicle exiting the site. However, there is a high level of certainty that the vast majority of quarry vehicles turn right of the tie site, and then travel to the A55. Only local deliveries would turn left out of the site. There is evidence within the planning application to support this assumption and any of the Community Councils could use this data to support Aggregates Levy applications to secure funds for community projects in the future.
- 7.34 On the basis of the evidence provided within the Transport Assessment and the information presented above, the Council's Head of Assets and Transportation does not object to the application. Vehicle movements would be controlled by condition, and additional works would be carried out on the local highway network which the applicant will provide a community sum. The application has demonstrated that an increase in export rates, and in-turn vehicle movements would not have a significant impact on the safe operation of the highway or cause any network capacity or maintenance concerns. As such, it is considered to comply with the provisions of GEN1, STR2, AC13 and AC14 of the adopted Flintshire Unitary Development Plan.

7.35 ***Residential Amenity; Noise, dust and blasting***

During the consultation residents have asked if the hours of operation at the quarry could be reviewed as part of the consideration of this planning application. Residents have stated that HGVs passing their homes in the early hours of the morning disturb their sleep, and have requested the Council to impose stricter opening hours. This has been proposed to the applicant but they have stated that this would have a substantial negative impact on their business. It would severely truncate their ability to service their market as many of their customers rely on product delivered at 07:00 hours, making a 06:00 hours start at the quarry imperative to allow for travel time. The quarry operator could not agree to such a restriction.

7.36 Should planning permission be granted, a new consent would be issued. Whilst the Mineral Planning Authority has the ability to impose any condition it sees fit, it would still have to pass the tests of Circular 11/95; 'The use of conditions in planning permissions'. The tests include that the condition has to be relevant to the development to be permitted, and also reasonable in all other respects. As the concerns raised are related to traffic on the highway disturbing sleep, as opposed to noise from the quarry or vehicles within the quarry, it would be difficult to defend a request to reduce working hours since a planning permission could not control vehicles on the public highway; any taxed vehicle could be legally using the highway at any time.

7.37 However, as stated previously, the applicant is willing to provide a commuted sum to provide an alternative road surface which would contribute to reducing the sound of vehicles wheel-spinning which could reduce disturbance levels.

7.38 Concerns have been raised in relation to the impact of increasing the tonnage output at the quarry as it is believed it would lead to an increase in dust, noise and blasting. The Council has received a number of complaints recently in relation to dust from the quarry which has caused the Mineral Planning Authority to write to them to address this breach of the existing condition in relation to dust. As a response to these concerns, the quarry operator has begun to implement a number of new dust mitigation techniques which include increasing the frequency of road sweeping on the local highway network, implementing an additional daily sweep and wash down of the quarry access road and at the end of the working day using a fixed brush and water bowser on the access road, and installing 'sleeping policemen' in the existing wheel wash to maximise the 'linger time' of HGVs passing through, thus improving the effectiveness.

7.39 Should planning permission be granted, an entirely new planning permission would be issued. As a result, this would provide the opportunity to revised and modernise if necessary the existing conditions to be in line with current planning guidance. It is proposed to address concerns in relation to dust, noise and blasting vibration to

require the applicant to submit compliance and monitoring action plans which would be reviewed annually to ensure compliance with conditions in terms of limitations, and to ensure that the operations are not causing a detrimental impact on the local environment and residents.

**7.40 *Environmental Assessment***

The application was screened negatively on 25 January 2016 in accordance with the provisions of the Environmental Impacts Assessment (England and Wales) Regulations 1999 (as amended). The Screening Opinion was been considered against the proposed change of the development which in effect would be an increase in output. It was considered that the proposal would not give rise to significant environmental effects and therefore would not require to be accompanied by an Environmental Statement.

**8.00 CONCLUSION**

- 8.01 Technically planning condition No.17 of the current planning permission for mineral extraction at Pant y Pwll Dŵr Quarry has been breached since 2011. However, evidence provided within the planning application and Transport Assessment concludes that whilst export limits have been exceeded, payloads have increased thus resulting in fewer vehicles per tonne exported. The increase in exportation levels has not resulted in a significant impact on the safe operation of the highway, and there were no recorded highway incidents involved quarry traffic. There have been no reports of exceptional maintenance issues caused by the passage of quarry traffic during this period.
- 8.02 In order to regularise this breach of tonnage output, the applicant has requested to increase the output figure from 800,000 tonnes per annum, measured over three consecutive years, to 1.2 million tonnes per annum, measured over three consecutive years.
- 8.03 However, it is considered that condition related to the output of the quarry, averaged over a three year period provides no control to the flow of traffic during a particular time. Furthermore, as the monitoring of this condition has demonstrated, it is not possible to ensure compliance or highlight a breach until three years have passed. It could be argued therefore that such condition, should it be imposed by the Mineral Planning Authority would not pass the tests set in circular 11/95, as it would not be enforceable and it is not precise. The imposition of a revised planning condition to control actual vehicle numbers would prove to be more effective in managing the quarry output and hence traffic on the highway.
- 8.04 It is therefore recommended that Condition No.17 be removed and replaced with a condition to control the number of vehicles entering



and leaving the site on a daily basis. It is recommended that the replacement conditions reads:

*“The total number of daily HGV movements associated with the development hereby approved shall not exceed the following limits:*

- 600 movements (300 in and 300 out) Monday to Friday*
- 300 movements (150 in and 150 out) Saturdays*

*In any 12 month period the quantity of processed limestone aggregate leaving the site shall not exceed 1.2 million tonnes.”*

- 8.05 Should planning permission be granted, as a new development consent would be issued, this would replace the need for the applicant to submit an application for the determination of new conditions. All other conditions related to the approved quarry development in which the operation is controlled would be reviewed and modernised to ensure that the Mineral Planning Authority has control on the operations for example in relation to dust, noise, vibration and blasting from the quarry.
- 8.06 It is considered that the proposed application and increase in daily vehicle movements would not give rise to a significant effect on the nearby SAC or SSSI
- 8.07 In determining this application, the Council has had regard to the Policies of the Development Plan, and regional and national policy, legislation and guidance. Subject to the imposition of conditions as listed above, there is no sustainable planning reason why planning permission should be refused. Accordingly, it is recommended that planning permission should be granted. The applicant has agreed to enter into a Unilateral Undertaking via Section 106 of the Town and Country Planning Act 1990 to provide a commuted sum for resurfacing works to provide an anti-skid surface to reduce the risk of wheel-spinning, and to provide funds to repair a fence adjacent to a cattle grid in Pentre Halkyn. The proposal would give rise to increased vehicle movements and the anti-skid resurfacing should address concerns in relation to wheel skidding and associated vehicle noise and disturbance when vehicles are turning right onto Bryn Emlyn. If the Section 106 Obligation (as outlined above) is not completed within 6 months of the date of the committee resolution, the Head of Planning be given delegated authority to REFUSE the application.

## **9.00 OTHER CONSIDERATIONS**

The Council has had due regard to its duty under Section 17 of the Crime and Disorder Act 1998 and considered that there would be no significant or unacceptable increase in crime and disorder as a result of the recommended decision.

The Council has acted in accordance with the Human Rights Act 1998 including Article 8 of the Convention and in a manner which is

necessary in a democratic society in furtherance of the legitimate aims of the Act and the Convention.

The Council has had due regard to its public sector equality duty under the Equality Act 2010.

The Council has had due regard to its duty under Section 3 of the Wellbeing of Future Generations (Wales) Act 2015 and considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the recommended decision.

#### **LIST OF BACKGROUND DOCUMENTS**

Planning Application & Supporting Documents

National & Local Planning Policy

Responses to Consultation

Responses to Publicity

<b>Contact Officer:</b>	<b>Hannah Parish</b>
<b>Telephone:</b>	<b>(01352) 703253</b>
<b>Email:</b>	<a href="mailto:hannah.parish@flinshire.gov.uk">hannah.parish@flinshire.gov.uk</a>