

# **DERBYSHIRE AND DERBY MINERALS LOCAL PLAN**

## **Towards a Minerals Local Plan: Spring 2018 Consultation**

### **CHAPTER 9**

#### **SUPPLY OF OTHER MINERALS**

- **Borrow Pits**
- **Re-working of former spoil tips**
- **Incidental working of Clay**
- **Minerals Related Development**

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## **Borrow Pits**

### **What are Borrow Pits?**

- 9.1.1 Borrow pits is the term used to describe temporary mineral extraction or disposal sites which are used in association with major building or civil engineering projects, such as the construction of new road schemes or reservoirs. They are used solely to supply mineral based construction materials for these projects, and which are sometimes used for the disposal of other surplus materials from the construction site. They normally involve the excavation of large quantities of material over a short period from a site lying adjacent or very close to the development site. Typically, the materials are used to provide bulk fill but they can also be used for specialist purposes, for example the supply of clay with particular qualities for placement around bridge supports over water courses. The void created by the mineral extraction can, where necessary, be used to dispose of surplus excavation materials from the construction works. Examples in the Plan area include the borrow pits used in connection with the construction of the A50 Stoke-Derby link between the M1 motorway and Doveridge.

### **Why are they Used?**

- 9.1.2 Borrow pits can have a number of advantages over established quarries. Major construction projects such as road schemes are normally intensive developments and require large quantities of material over a relatively short period. For a developer, the use of a borrow pit operated under their control can ensure the availability of the material that is required in the right quantities and the right times to serve the needs of the construction project. In contrast, an established quarry may have a number of existing supply contracts and may not be able to guarantee delivery in the volumes which are required, especially if the quarry output is limited and controlled by the terms of the planning permission. In addition, sourcing the material from an adjacent site reduces the volume of traffic on public roads and the associated impacts that can have, as well as minimising the use of fossil fuels. The use of borrow pits can also help conserve reserves at established quarries and ensure that the construction project uses materials of an appropriate quality.

- 9.1.3 In contrast, proposals for borrow pits often involve greenfield sites in areas where mineral working would not normally be acceptable. In the past, the Mineral Planning Authorities have maintained a restrictive approach towards these forms of development. Developers have been required to demonstrate that the proposed site would present a range of benefits that would offset any adverse impacts of mineral extraction in such locations, that they set out a clear and acceptable method of operation with appropriate mitigation measures and provide for an appropriate form of restoration. Where the principle of development has been accepted, planning conditions have been imposed to control the working and reclamation of the site.

### **National and Local Planning Policy**

#### **National Planning Policy Framework and National Planning Practice Guidance**

- 9.1.4 The issue of borrow pits is not addressed explicitly in either of these national planning policy and guidance statements. Borrow pits however, are a form of mineral development and the guidance of these documents relating to the need to deliver sustainable mineral development to support economic growth and provide for the needs of society whilst protecting the environment and local communities applies to these developments.

#### **Derby and Derbyshire Minerals Local Plan 2000**

- 9.1.5 Borrow pits are mineral developments and the Plan contains a number of policies which are used to assess and determine all such developments. These policies are applied in the same way as for other mineral development to determine the balance between the need for the mineral to be worked and the environmental and other interests which may be affected, and will only be accepted where they offer net environmental gains over alternative sources of supply.
- 9.1.6 As stated above, borrow pits are particular forms of mineral development and are often proposed in areas where mineral extraction would not normally be allowed. Accordingly the Plan includes an additional policy setting out a further set of

criteria which are relevant to the particular circumstances of this type of mineral development. These requirements are currently set out in policy MP11: Borrow Pits, of the adopted Derby and Derbyshire Minerals Local Plan. This states that:

*Proposals for temporary minerals workings related to specific construction projects (borrow pits) will be permitted only where there are net environmental benefits, compared with supplying the project from established sources, and in particular, where:*

- there is a need for the development to supply major construction works, which cannot reasonably be met from established sources, or the supply of material from such sources would be seriously detrimental to local amenities because of the scale, location and timing of the operations*
- the site is adjacent to the proposed construction project so that use of the public highway for the transport of materials is minimised*
- the proposal would not cause irreparable or unacceptable damage to interests of acknowledged environmental importance and*
- satisfactory provision is made to reclaim the site, as far as possible without the use of imported materials.*

*Where planning permission is granted a condition would be imposed to ensure that the mineral operation and all material removed is limited solely to that necessary for the related construction project.*

### **Consultations Undertaken and Comments Received**

- 9.1.7 The issue of borrow pits was not explicitly set out in the Issues and Options exercise or the 2015/16 Rolling Consultation. However, the minerals obtained from borrow pits normally consist of aggregate bulk fill or clay and the approach towards the provision for, and extraction of, these materials has been subject to extensive consultation. Likewise, the range of criteria to be included in the policies of the Plan and used to determine planning applications has also been the subject of consultations. The messages from these exercises is that the need for the Plan area to contribute to the supply of minerals is acknowledged and accepted but that mineral extraction should only be allowed where an acceptable balance between the need for the mineral and the environmental, social and economic

interests of the area can be achieved. These requirements formed the underlying principles to policy MP11 and will be continued through to the new Plan.

### **Duty to Co-operate**

- 9.1.8 The County and City Councils have engaged with a wide range of other local planning authorities, bodies and organisations to identify strategic cross-boundary issues and develop a consistent approach to those issues. Borrow pits have not been identified as a strategic issue and have not been included in Duty to Co-operate discussions.

### **Sustainability Appraisal**

- 9.1.9 The Sustainability Appraisal process is a way of testing the impact of the Plan against a series of sustainability objectives. Where the process recommends improvements to the Plan, these will be incorporated. A sustainability appraisal has been undertaken on all the papers which constituted the Towards a Minerals Local Plan Rolling Consultation 2015-2017. Whilst borrow pits were not included as a specific matter, the SA has assessed all other matters relating to the provision for aggregate and clay minerals and the criteria for the assessment and determination of development proposals. The proposed approach for borrow pits will be subject to the SA process at the next stage of Plan preparation.

### **Proposed Approach**

- 9.1.10 As the use of borrow pits is so closely linked to new, major development proposals, it is not possible to predict the level of demand for them over the Plan period. However, based on the major projects that have been announced, it is very likely that there will be a demand for borrow pits at some point. The Plan needs to set out the approach to the use of borrow pits and it is considered that the existing policy of the adopted plan has proved to be satisfactory. It is therefore proposed to include a similar policy, updated in line with current national mineral planning policy.

### **Policy MS19 Borrow Pits**

**Proposals for borrow pits associated with construction projects will be permitted, subject to satisfying the criteria in the development management policies and:**

- **The site is adjacent to or sufficiently close to the project so that the material can be conveyed to or from the site without using the public highway and without undue interference to footpaths and bridleways**
- **The material extracted will only be used in connection with the project or will be used to receive material from the project**
- **It can be demonstrated that the supply of material from the borrow pit could not be obtained from other permitted sites nearby or would have significantly less environmental impact than if it were supplied from an existing source**
- **The borrow pit can be restored to the standards specified elsewhere in the Plan without the use of imported material, other than that generated from the construction project and**
- **The use of the borrow pit is limited to the life of the project.**

## **Reworking of Former Spoil Tips**

### **Introduction**

- 9.2.1 The underlying objective of the planning system is to deliver sustainable development and that involves making the best use of our resources. Minerals are a finite resource and it is particularly important to use and re-use minerals in a prudent manner.
- 9.2.2 The Plan area contains a number of historic spoil tips associated with former collieries and other large scale manufacturing and heavy engineering industries. Chapter 8 considers the reworking of former colliery spoil tips as part of the overall approach to coal mining, but as the Plan area contains a number of other tips that probably contain minerals of interest, the wider aspects of the reworking of all such tips is considered separately.

- 9.2.3 The processing plant used at collieries in the 20<sup>th</sup> Century were generally inefficient by modern standards and resulted in substantial quantities of coal being deposited in the spoil tips along with other discarded materials. Some of the tips also contain other materials which were previously regarded as waste (for example red shale) but are now in demand. The recent reworking of one of the former spoil tips at the St Gobain site (formerly the Stanton and Staveley works) to the south of Ilkeston is a recent example of this form of development.
- 9.2.4 Advances in processing technology now make it possible to recover the coal and other minerals from these tips, although the viability varies in accordance with the price and the quantity available. The new Minerals Plan has an underlying objective to deliver sustainable development and it will need to incorporate an agreed approach to this issue as part of the overall approach to sustainable minerals development.

#### **Benefits of Reworking former Spoil Tips**

- 9.2.5 The reworking of spoil tips has a number of obvious benefits. It helps to reduce the need for coal and other minerals to be obtained from new sites, thus retaining primary minerals for use in the longer-term. It could extend the life of established quarries and even avoid or delay the need for new extraction sites. In addition, the reworking of spoil tips has the potential to facilitate the improvement of those sites that did not benefit from a high standard of reclamation at the time and which detract from the environment and character of the area.

#### **Potential Impacts of Reworking former Spoil Tips**

- 9.2.6 Whilst the reworking of former spoil tips may represent a small scale development compared to traditional mineral extraction sites, the operations can involve substantial engineering works requiring the use of large machinery and other plant such as screening and washing equipment. These activities therefore have the potential to generate a range of adverse environmental impacts similar to those for more regular mineral extraction sites. The benefits of the mineral to be obtained by such developments therefore need to be balanced against those potential impacts.

- 9.2.7 A further consideration is the current condition of the spoil tip. In recent years, many of the older spoil tips have been restored and are now an established feature of the landscape. Reworking of these tips could negate the benefits derived from the earlier restoration programme and this would need to be taken into consideration in the overall balance of costs and benefits.

### **National and Local Policy**

- 9.2.8 The National Planning Policy Framework does not address the issue of the reworking former colliery and other types of spoil tips directly, but it does advocate the sustainable and prudent use of our mineral resources. In this respect it highlights the advantages of using secondary materials in preference to the extraction of primary materials. It therefore gives implicit support for this form of development.
- 9.2.9 Policy MP15: Working of Former Tips (For Purposes Other Than Secondary Aggregate Production) in the current adopted Derby and Derbyshire Minerals Local Plan refers to the working of former tips but this does not address all the circumstances where such developments may be considered. The guidance and tests it provides are also limited, being restricted to stating that proposals where the land has been satisfactorily reclaimed or naturally re-generated to an acceptable degree will be considered as a new proposal on a greenfield site.

### **Consultations Undertaken and Comments Received**

#### **Issues and Options 2010**

- 9.2.10 The consultation included 'Reworking Spoil Tips for Secondary Aggregates' as a specific issue. Whilst this issue does not cover the whole range of circumstances where the reworking of old spoil tips may be considered it did introduce the issue as a topic for discussion. The response to this consultation exercise indicated support in principle for the reworking of old tips and favoured the inclusion of a criteria based policy to determine the acceptability of development proposals.

### **Towards a Minerals Local Plan Rolling Consultation 2015/2016**



9.2.11 This consultation raised the issue in several ways. The consultation paper, Towards Strategic Sustainability Principles, sought views relating to the production of secondary aggregates in general, whilst the consultation paper for coal mining sought views relating to the reworking of former colliery spoil tips in light of the policy guidance in the NPPF and for the purposes of obtaining other valuable and re-usable mineral resources within them.

9.2.12 It presented two options:

Option 1: Include in the Minerals Local Plan a separate criteria based policy for the reworking of former colliery spoil tips for coal and any other mineral. Or

Option 2: Do not include a separate policy for the reworking of former colliery spoil tips and rely on the general criteria established in the main policy for coal extraction developments.

Two responses were received on this issue; one supporting option 1 and one supporting option 2, and did not provide any specific steer for the new Plan.

### **Duty to Cooperate**

9.2.13 Whilst the general distribution of coal resources in the UK, the energy needs of the country and the supply of some of the minerals contained in former tips represent significant cross-boundary matters for this Minerals Local Plan and those of neighbouring authorities, the reworking of former spoil tips was not considered to represent a duty to co-operate issue.

### **Sustainability Appraisal**

9.2.14 A sustainability appraisal has been undertaken on all the papers which constituted the Towards a Minerals Local Plan Rolling Consultation 2015-2017. It did not however evaluate the options concerning the reworking of former colliery and other spoil tips. The proposed approach to these forms of mineral

development will be subject to the SA process at the next stage of Plan preparation.

### **Proposed Approach**

- 9.2.15 Whilst many of the older spoil tips in the Plan area have been removed as part of redevelopment or regeneration schemes or restored and landscaped, some remain and are likely to contain important minerals which could form the basis for commercially viable operations. The policy approach of the current adopted Minerals Local Plan has proved to be an effective mechanism in combination with other development management policies but it is acknowledged that it did not cover all development possibilities. In the absence of any steer from the recent consultation exercise, it is proposed to include a policy on the reworking of spoil tips in the new Plan that relates to the extraction of all the minerals they contain and which establishes a more explicit set of criteria for this form of mineral development. In view of the contribution that minerals from such sources can make, it is intended that the policy will be supportive of such proposals subject to compliance with the established criteria.

## **Policy MS20 Reworking of Former Colliery and Other Spoil Tips**

**Proposals for the extraction of coal and other minerals previously deposited minerals in colliery and other spoil tips will be permitted where the applicant has demonstrated that:**

- it is environmentally acceptable, or can be made so by planning conditions, agreements and obligations;**
- it would not adversely affect local amenity;**
- it would not result in the loss of important wildlife and habitats on the site;**
- it would not adversely affect any previous reclamation works that have been carried out on the site, or, if so, it would result in further, significant improvements to the previous reclamation scheme.**

**Where an application does not satisfy these requirements, planning permission may still be granted where the applicant can demonstrate that there would be other benefits which would clearly outweigh the adverse impacts of the development.**

## **Incidental Working of Clay**

### **Introduction**

- 9.3.1 The Plan area contains resources of both brick clay and fireclay and the specific approach to the provision for these minerals is addressed in Chapter 7. This section addresses the incidental working of clay; that is the removal of clay to enable the commencement of another approved development. Chapter 8 addresses the incidental working of coal as a separate issue although it is noted that coal and clay resources are often synonymous.
- 9.3.2 Clay is commonly found in association with coal and the Plan area still contains a substantial resource of coal, including coal lying close to the surface. It is likely therefore that, during the Plan period, there will be a number of non-mineral developments on sites where coal and or clay deposits are close to the ground surface and where it may be necessary or desirable to remove the mineral prior to development.

### **National and Local Policy**

- 9.3.3 The National Planning Policy Framework states that, when preparing local plans, local planning authorities should set out policies to encourage the prior extraction of minerals, where practicable and environmentally feasible, if it is necessary for non-mineral development to take place. In turn, it provides guidance on the issues that mineral planning authorities should take into account when determining mineral development proposals. This guidance, therefore, relates to the incidental working of clay.
- 9.3.4 The adopted Derbyshire and Derby Minerals Local Plan includes policy guidance on the prior extraction of coal but does not address the prior removal of clay or other minerals. The relevant guidance is provided within the overall policy (MP27: Coal Extraction and Colliery Spoil Disposal) relating to coal developments. It makes provision for the removal of coal where the extraction is necessary in advance of other approved development in order to avoid sterilisation of reserves, or to provide local or community benefits subject to a set of requirements. These include the minimisation of any additional adverse effects to an acceptable level

and that the extraction would be completed and the land reclaimed in time, and to a standard, to allow the subsequent development to take place as planned without unreasonable delay. It also provides support in principle where it is necessary to remove coal to facilitate the efficient and economic working of other minerals in an environmentally acceptable way and the extent to which the proposal would provide employment opportunities or other economic benefits.

### **Prior Extraction Issues**

- 9.3.5 The main issues relating to the incidental working of clay are similar to those for other minerals. The main issues concern the benefits of prior, incidental extraction, especially in terms of delivering sustainable mineral development and the adverse impacts of the additional works that are involved.
- 9.3.6 Most of the benefits have already been outlined in Chapter 8 on coal. In summary, the presence of mineral (clay, coal or other mineral) close to the surface may compromise the integrity and safety of any built development or use of land and prior extraction would remove such obstacles. The presence of mineral close to the surface may physically inhibit new built development and prior extraction could be the only means of enabling the approved development to be delivered.
- 9.3.7 Prior extraction of clay prevents an important mineral resource from becoming sterilised, either permanently or at least for the long-term. Mineral resources are a finite resource and prior extraction would ensure the best and most prudent use of the resource and reduce the need for primary resources from established quarries.
- 9.3.8 In contrast, the prior extraction of clay from an approved development site has the potential to give rise to additional adverse impacts over and above those from the implementation of the approved development. It is therefore necessary to consider the scale and nature of such adverse impacts against the benefits of the mineral obtained. The extraction of the mineral would involve the use of heavy engineering based plant and machinery which could generate impacts from noise, dust and vibration. Transporting the mineral off-site would also generate

additional vehicle movements which could generate additional impacts along the route taken.

### **Consultations Undertaken and Comments Received**

- 9.3.9 The issues involved with the prior extraction of coal formed part of the 2015/16 Rolling Consultation exercise and the responses are addressed in Chapter 8. The prior extraction of other minerals, including clay, was not included as a specific issue. It is evident however, that there is strong support of sustainable mineral development and it is considered that incidental working of all minerals, where appropriate, forms part of that approach.

### **Duty to Cooperate**

- 9.3.10 Whilst the supply of clay represents a significant cross-boundary matter for this Minerals Local Plan and those of neighbouring authorities, the incidental of clay was not considered to represent a duty to co-operate issue.

### **Sustainability Appraisal**

- 9.3.11 The Sustainability Appraisal process is a way of testing the impact of the Plan against a series of sustainability objectives. Where the process recommends improvements to the Plan, these will be incorporated. A sustainability appraisal has been undertaken on all the papers which constituted the Towards a Minerals Local Plan Rolling Consultation 2015-2017. It did not however, address incidental mineral extraction (clay or other minerals) as a specific issue as it was considered to be an implicit part of the overall approach to the provision of minerals against the overarching vision, objectives and sustainability principles. The proposed approach to these forms of mineral development will be subject to the SA process at the next stage of Plan preparation.

### **Proposed Approach**

- 9.3.12 As stated above, the National Planning Policy Framework requires mineral planning authorities to set out policies to encourage the prior extraction of minerals, where practicable and environmentally feasible, if it is necessary for

non-mineral development to take place. It is proposed, therefore, to include such a policy in the new Plan and a version is presented below for consideration. The policy would apply to the incidental working of clay and other minerals except coal, which is addressed in a separate policy.

### **Policy MS21 Incidental Working of Clay and Other Minerals (except coal)**

**Proposals for the prior extraction of clay or other minerals, except coal, will be supported where the applicant can demonstrate that:**

- **the removal of the mineral is necessary for the safe implementation of another approved development;**
- **it would avoid the permanent or long-term sterilisation of mineral resources;**
- **it enables the remediation of contamination; and**
- **it would not give rise to unacceptable impacts on the environment and local amenity.**

**Where the scale and extent of incidental mineral extraction is small the respective district or borough council will be the appropriate planning authority. Where the scale and extent of incidental extraction is of a significant level or the volume to be extracted is greater than the minimum necessary to enable the development to proceed, then the mineral planning authority will be the appropriate planning authority. For the purposes of this policy incidental extraction will be the responsibility of the mineral planning authority where the area of extraction exceeds 1 hectare or the volume exceeds 5,000 tonnes.**

## **Mineral Related Development**

### **Introduction**

- 9.4.1 The winning and working of minerals at extraction sites and quarries usually involves the use of plant, machinery and buildings directly associated with the extraction operation. In addition, there is usually a need for ancillary developments close by for the treatment, preparation and processing of the extracted mineral prior to transport off site or for use in the production of products at the site. Examples of the former include plant to crush and screen raw mineral to a specified size or to wash raw mineral to remove impurities. Examples of the latter include ready-mix concrete plants, concrete products and asphalt plants.
- 9.4.2 There a number of operational reasons why it is advantageous to co-locate ancillary services with the main mineral extraction operation. It can reduce overall transport requirements and concentrate development on one site rather than a number of separate sites. The focus of additional plant, buildings and machinery (sometimes substantial in scale) can generate adverse environmental impacts, for example, in terms of visual intrusion, noise and traffic generation where the extraction site is not well related to the highway network. Therefore, the need for such development, often in countryside locations, needs to be justified in net environmental terms.

### **Control over Mineral Related Development**

- 9.4.3 Not all mineral related development requires planning permission. A limited range of development is permitted under the General Permitted Development (England) Order (GPDO) 2015, although the exemptions apply to specified development carried out on land used as a mine. To qualify, the development must be for purposes principally in connection with the winning and working of minerals from the mine, and includes the treatment, storage or removal of minerals and derived wastes. A wider range of development, including secondary industry is also permitted under the GPDO but subject to prior approval by the mineral planning authority.



- 9.4.4 Other forms of mineral related development require planning permission. For some mineral extraction sites, particularly those of a limited duration, the range of ancillary equipment may have been identified in the original planning application and the use would be included in the planning permission. Some of the quarries in the Plan area however, are substantial in size and will continue to operate for many years. The need for ancillary development at these quarries will vary over time and may involve the installation of new or replacement services on different locations within the quarry. The new Plan needs to set out how it will determine the acceptability of such development to ensure that any benefits of co-location are not outweighed by environmental and amenity impacts.

#### **National and Local Policy**

- 9.4.5 Neither the National Planning Policy Framework nor the National Planning Practice Guidance specifically address the issue of mineral related development. Guidance is provided for mineral development in general only. The issue was addressed in the adopted Derby and Derbyshire Minerals Local Plan under policy MP12: Mineral Related Development. This states that proposals for mineral related development will be permitted where there are net environmental benefits in a close link between the industrial and mineral developments, provided that the development is located, designed and landscaped to minimise any adverse effect on the environment and the development will not create unacceptable traffic problems. In addition, it stipulates that permissions will be conditioned to ensure that the mineral to be used is produced on site and that on completion of mineral working, all plant and machinery is removed, and the site is satisfactorily reclaimed.

#### **Consultations Undertaken**

- 9.4.6 The issue of mineral related development is inextricably linked to mineral development in general and was not identified as a specific consultation issue in any of the previous consultation exercises. Mineral related development is most likely to take place at or close to an approved mineral development site and the criteria to be included in the policies of the plan to determine the acceptability of mineral extraction development will automatically apply to related development.

### **Duty to Co-operate**

- 9.4.7 Mineral related development was not considered to be an issues of strategic significance as the main issues raised are focused on the impact of the specific site, notwithstanding that the visual impact of such plant can affect a wider area.

### **Sustainability Appraisal**

- 9.4.8 The Sustainability Appraisal process is a way of testing the impact of the Plan against a series of sustainability objectives. Where the process recommends improvements to the Plan, these will be incorporated. A sustainability appraisal has been undertaken on all the papers which constituted the Towards a Minerals Local Plan Rolling Consultation 2015-2017. It did not address mineral related development as a specific issue as it was an implicit part of the overall approach to the provision of minerals against the overarching vision, objectives and sustainability principles. The proposed approach to these forms of mineral development however will be subject to the SA process at the next stage of Plan preparation.

### **Proposed Approach**

- 9.4.9 It is considered that the approach and policy of the existing minerals plan has been an effective way of determining mineral related development and it is proposed to continue this into the new Minerals Local Plan. It is considered that it is a positive policy and accordance with the guidance of the National Planning Policy Framework.

## **Policy MS22 Mineral Related Development**

**Proposals for mineral related development which require planning permission will be permitted where there are net environmental benefits in a close link between the industrial and mineral developments, and provided that:**

- 1) the development is located, designed and landscaped to minimise any adverse effect on the environment and**
- 2) the development will not create unacceptable traffic problems.**

**Where permission is granted, conditions will be imposed to ensure that:**

- 1) the mineral used is produced mainly on site and**
- 2) on completion of mineral working, all plant and machinery is removed, and the site is satisfactorily reclaimed.**