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To: The Chair and Members
of the Development
Management Committee

County Hall
Topsham Road
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Date: 28 November 2023

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DEVELOPMENT MANAGEMENT COMMITTEE

Wednesday, 6th December, 2023

A meeting of the Development Management Committee is to be held on the above date at 2.15 pm at Daw Room, County Hall to consider the following matters.

Donna Manson
Chief Executive

A G E N D A

PART 1 - OPEN COMMITTEE

1 Apologies for Absence

2 Minutes

Minutes of the Meeting held on 6 September 2023 (previously circulated)

3 Items Requiring Urgent Attention

Items which in the opinion of the Chairman should be considered at the meeting as matters of urgency.

MATTERS FOR DECISION

- 4 County Matter: Minerals: South Hams District: Variation of Condition 19 of planning permission 9/42/49/0542/85/3 (DCC/3823/2015) (dated 16 February 2017) to remove weekly and annual tonnage caps on the export of secondary aggregates and to amend the condition to introduce restrictions on hours of export and prohibit exports at the weekend and on bank holidays, Hemerdon Mine, Plympton (Pages 1 - 30)

Report of the Chief Planner (CET/23/104)

*Electoral Divisions(s): Bickleigh &
Wembury*

- 5 County Matter: Minerals - North Devon District: Article 4 Direction to remove permitted development rights for mineral working for agricultural purposes Location: Codden Hill, Bishop's Tawton, Barnstaple (Pages 31 - 70)

Report of the Chief Planner (CET/23/105)

*Electoral Divisions(s): Chulmleigh &
Landkey*

OTHER MATTERS

- 6 Delegated Schedule (Pages 71 - 72)

Report of the Chief Planner (CET/23/106)

PART II - ITEMS WHICH MAY BE TAKEN IN THE ABSENCE OF THE PRESS AND PUBLIC

Nil

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CET/23/104
Development Management Committee
6 December 2023

County Matter: Minerals: South Hams District: Variation of Condition 19 of planning permission 9/42/49/0542/85/3 (DCC/3823/2015) (dated 16 February 2017) to remove weekly and annual tonnage caps on the export of secondary aggregates and to amend the condition to introduce restrictions on hours of export and prohibit exports at the weekend and on bank holidays, Hemerdon Mine, Plympton

Applicant: Tungsten West

Application No: DCC/4365/2023 (3193/23/DCC)

Date application received by Devon County Council: 13 September 2023

Report of the Chief Planner

Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.

1) Recommendation

It is recommended that, subject to the applicant entering into a S106 obligation for the provision of offsite highway improvements and to bind the new planning permission to any obligations within the existing S106 agreements, together with the imposition of additional planning conditions relating to traffic control, Condition 19 of planning permission 9/42/49/0542/85/3 be varied as set out in Appendix 1 to this report (with any subsequent minor material changes being agreed in consultation with the Chair and Local Member).

2) Summary

- 2.1 This report relates to an application to vary the wording of Condition 19 of the existing planning permission for the Hemerdon tungsten and tin mine to remove the tonnage caps which restrict the export numbers of waste or secondary aggregates and to introduce restrictions on hours and days of operation as lorry movements at the site are currently permitted at any time of the day or week.
- 2.2 It is considered that the main material considerations in the determination of the proposed development are: planning policy; need and market considerations; sustainability considerations; impact on the highway network; highway safety; noise and proximity to residential properties; air quality and health; flooding; nature conservation; landscape; and climate change.
- 2.3 The planning application, representations received and consultation responses are available to view on the Council website under reference DCC/4365/2023 or by clicking on the following link:
<https://planning.devon.gov.uk/PlanDisp.aspx?AppNo=DCC/4365/2023>

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3) The Proposal/Background

Background

- 3.1 Tungsten mining in some form has taken place in this location from the start of the 20th century. In 1986 Devon County Council as the mineral planning authority [MPA] granted planning permission [9/42/49/0542/85/3] for a significant extension to the operations which would result in a deep open cast pit with a new processing plant and a mine waste facility capable of accommodating in the region of 100 million tonnes of overburden, crushed stone and tailings from the mine processing.
- 3.2 Due to the variations in the world price of tungsten, the operation was essentially mothballed until 2014 when the site was re-opened by Wolf Minerals and renamed Drakelands Mine. In 2017 the 1986 planning permission was varied [DCC/3823/2015] to alter a number of conditions and to extend the life of the original permission in recognition that it had not been worked as expected and that there was a limited period of operation left. The 1986 permission would have expired in 2021 but was extended until 2036.
- 3.3 Wolf Minerals entered into receivership in late 2018 and the mine has again been mothballed until its purchase by Tungsten West in 2021, following which time the new owners have been working to reinstate the Environmental Permits which were disclaimed by the Official Receiver when he held the site and remaining assets. In particular, they are working with the Environment Agency to resolve issues of Low Frequency Noise which were attributed to the large screens in the main process plant.
- 3.4 The 1986 permission gave the following reason for what is now Condition 19: "To ensure that the highway network and access are adequate to cater for the traffic likely to be generated, and to protect the amenities of residents in the area". This condition, which was reiterated as Condition 19 in the 2017 consent, states that the restriction on vehicle movements is "In the interests of highway safety and (additionally) to ensure that "the overall restoration profiles are considered in any movements of materials in accordance with Policies MP41 and MP56 of the Devon County Minerals Plan and Policies M18, M23 and M27 of the Devon Minerals Plan".
- 3.5 In August 2020 under the condition wording "unless otherwise agreed in writing by the MPA" and following consultation with National Highways and the Highways Authorities for Devon and Plymouth, the operator was temporarily permitted to uplift the export of aggregates to a maximum of 150 movements per day (75 trips) for a period of six months.
- 3.6 This temporary uplift was agreed partially to understand whether an increase in HGV movements would have any adverse impact on the existing road network or the A38 junctions. The agreement was based on the condition that the MPA reserved the right to terminate the agreement if there was a justified complaint that the operation was causing an adverse environmental or amenity impact along the haul route, and subject to additional conditions that there would be no more than four HGVs passing across the Deep Lane Junction during peak hours

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and that there would be movements only between 0700 and 1900 Mondays to Fridays and 0800 to 1400 on Saturdays.

- 3.7 Due to the COVID pandemic, the uplift over the existing permitted numbers did not commence until June 2021 after an agreement from the County Council that the start had been deferred but that the uplift to 75 trips (150 movements) would still continue over the same agreed period of six months (to December 2021). The agreement was again extended in January 2022 as the weighbridge records showed that the original condition limits had only been exceeded on 10 days during the six months trial. The agreement was extended to June 2022 with the operator being informed that another informal period would not be acceptable and that a planning permission would need to be submitted.
- 3.8 Between February 2021 and September 2022 the operator sold 102,000 tonnes of aggregate products from the site with peak sales and movements in November 2021 (16.1k tonnes) and December 2021 (13.9k tonnes). During the period overall the operator did not exceed the current planning condition requiring the cumulative tonnage to be under 150k tonnes per annum.
- 3.9 The tonnage and hours of operation currently being suggested are more restrictive than those set out in the temporary agreement which included running on a Saturday morning.
- 3.10 It is apparent from some of the objections received that there is a misapprehension that this temporary agreement had been a separate planning permission rather than an informal agreement under the wording of the existing condition.
- 3.11 No formal complaints about traffic numbers or routeing were received by the County Council during the period of this temporary arrangement, although there is commentary from some objectors that they did complain to Parish Councillors and Ward Members in Plymouth.
- 3.12 It is understood from the operator that there is very little remaining material on the mine site, and any future exports could not happen until such time as mining for tungsten and tin recommences and creates aggregate as a by-product of the primary mining operation.
- 3.13 In late June 2022 and following public engagement by Tungsten West at meetings in Sparkwell and Plympton, a further planning application [DCC/4312/2022] was made to vary Condition 19 to increase the amount of secondary aggregate exported from the site to a maximum of 200 outward movements (400 movements total) per day. This was considerably higher than the existing permitted numbers or the temporary arrangement, and it generated considerable local opposition and was withdrawn in November 2022.
- 3.14 The mining operation as permitted is projected to create in the region of 100 million tonnes of waste, much of which is waste rock required to support the tailings lagoon in the Mine Waste Facility which has consent to rise to a height of 215m AOD (currently 172m).

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- 3.15 The proposed new method for working this material and the use of ore sorters is likely to result in less material passing through the secondary process plant. This is likely to increase the volume of non-mineral bearing crushed rock would go straight to the tip without further processing after that first phase. This would mean that there is a potential to produce a number of different grades of crushed rock which is a genuine by-product of the mining operation and is therefore a “secondary aggregate” using the Government definition: “a by-product of other quarrying and mining operations, such as china clay waste, slate waste and colliery spoil, or material arising as unavoidable consequence of construction works, as well as manufactured aggregates obtained as a by-product of other industrial processes”.

Proposal

- 3.16 The application proposes that the Condition should be amended to read (with additions in bold and removed text in strikethrough):

“No waste other than that required to be transported to a suitably licensed facility and otherwise unable to be disposed within the site shall be transported from the site. The number of heavy goods vehicles transporting waste (that is not permitted to be disposed within the Mine Waste Facility) or secondary aggregate leaving the site shall not exceed 50 in any one day [~~and the total tonnage of secondary aggregate transported shall not exceed 4,000 tonnes in any week or 150,000 tonnes in any calendar year without the prior consent in writing of the Mineral Planning Authority~~]. **HGV movements will only occur during the following specified periods: Monday-Friday 07:00 – 17:00. No HGV movements shall be permitted on Saturdays, Sundays or Bank Holidays.** There shall be no importation of waste materials to the site unless they are specifically required for restoration purposes as identified in the annual restoration proposals and the amount previously agreed by the Mineral Planning Authority. The operator shall provide to the Mineral Planning Authority details of the number of HGVs leaving the site carrying secondary aggregates or mineral waste over a 12 month period.”

- 3.17 The proposed condition therefore seeks to remove the annual and weekly tonnage caps, but it would introduce operational hours where none currently exist. It would also remove the “unless otherwise agreed” caveat that is no longer NPPF compliant and would mean that any future changes would also need to be considered through this process of a formal application for a variation of the condition.

Unilateral Undertaking

- 3.18 Following preapplication discussions with the Highway Authority and as a result of feedback on issues of local concern, the applicant has offered a Unilateral Undertaking. This will include provision for a road widening south of the site and a financial contribution to a package of safety measures closer to the site entrance including road lining, a contribution to cabling for and provision of a speed camera and the introduction of a speed limit (due to specific concerns raised about speeding motorcycles). As all of these measures are outside the red line of the original site they cannot be dealt with as a variation of a condition of

the original planning consent. The highway improvements which will be funded by the applicant will also be secured by a 'Grampian' condition that the tonnage caps shall not be exceeded until such time as the works are in place and a S278 agreement with the Highway Authority to ensure that the road is improved to an adoptable standard. The details are included as ancillary information and the legal agreement will also have to include biodiversity offsetting measures which will be finalised once the road layout is approved.

- 3.19 The applicant has also offered to abide by a limitation on the numbers of larger articulated (44 tonnes) HGVs, this matter is dealt with further below in section 7 on highways.

Environmental Impact Assessment

- 3.20 The applicants requested the County Council to provide a screening opinion regarding whether this application required Environmental Impact Assessment [EIA] under the 2017 Regulations. This is a variation of a condition of an existing planning permission and the proposed changes to that permission which would occur were subject to consideration. The Regulations do not include impacts of the scale proposed and therefore the applicant was advised that, although a Transport Statement would be required, EIA would not be.

4) Consultation Responses

- 4.1 South Hams District Council (Planning): Express concerns that the removal of the tonnage caps does not place a limit on the potential for regular use on the size/weight of HGVs including 44t articulated lorries and the potential impact on local residents and the environment with relation to noise. The District Council also asks the MPA to consider whether the proposal helps climate change mindful of the declaration of a climate change emergency and the need to reduce carbon emissions.
- 4.2 South Hams District Council Environmental Health: no response received.
- 4.3 Plymouth City Council: objects to the application and recommends refusal on the basis of the increased impacts.

On transport, the application makes no case for the need to use the larger 44T articulated lorries and there is no detail setting out how their "occasional use" might be controlled. The applicants should have investigated providing another route to take HGVs more directly to the A38 avoiding Plympton's urban road network.

Should the tonnage caps be removed, the type and weight of tipper lorries being used at the mine be conditionally restricted to the use of rigid lorries of no more than 32T in weight only, which would apparently allow the Mine to meet its current business targets for the export of secondary aggregates. The lorry weight restriction would also help limit the adverse impacts from the additional lorry movements including impacts on residential amenity, highway safety (including in respect of the two schools along the haul route where conditionally no associated lorry movements should occur during the school starting and finishing times), and the associated damage to highway infrastructure. Moreover, the City Council

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would request the Mine provides a contribution toward improving the safety and condition of the road carriageway along parts of the haul route within the PCC boundary.

The impact on air quality of using larger 44T articulated lorries has not been fully tested and the increased loads will decrease vehicle efficiency and increase emissions and cause emissions from tyre wear.

Following its initial response Plymouth City Council was approached for further observations on the nature of their request for contributions to road damage and on the restriction of hours of operation and the weight of vehicles. A further comment was received on 15 November 2023 confirming that, after seeking legal advice, they would not be requesting any financial contribution for general highways maintenance, but they request that HGV movements be suspended to avoid school start and finish times (in term time) and welcome the commitment to control 44t HGV movements to a maximum of 10% of the annual movements (to be controlled by planning condition and submission of annual data).

The City Council reiterate the commentary with Policy PLY5 of the Joint Local Plan where decisions should be “seeking ‘appropriate planning conditions and agreements in relation to minerals extraction outside of the city boundary which impacts on the city’s environment and local communities’ and that this should include ‘where appropriate the development of a comprehensive access strategy which takes construction and other heavy goods traffic more directly to the A38, avoiding Plympton’s urban road network’”.

4.4 Sparkwell Parish Council: Objects to the proposal on the following grounds:

- the removal of the tonnage cap will result in greater impacts on the quality of life and the applicant has not provided any evidence of the need to use 44t articulated lorries nor how this would be controlled monitored or enforced, in breach of Mineral Plan Policy M23;
- the impact on air quality from the use of larger 44t HGVs has not been justified, and increased loads would decrease vehicle efficiency and increase impact on air quality and human health through increased emissions from diesel trucks and tyre wear which are related to the vehicle weight;
- demand for aggregates is already being met by a network of local suppliers and the volumes applied for would be in excess of local market need inevitably generating long haulage runs and additional pollution causing disease and fatalities, contrary to the NPPF and Mineral Plan policies M10, M16, M17, M18, M22 & M2;
- unacceptable impact on highway safety and cumulative impact from HGVs arising from other residential and commercial developments including Lee Moor quarrying and Langage, severely impacting the capacity of the local road network and particularly Deep Lane Junction; no comprehensive access strategy is contrary to the South West Devon Joint Local Plan; and

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- the proposal is not sustainable development and the proposed quantity of material is likely to affect other local producers and will cause harm to Sparkwell Parish.

4.5 Shaugh Prior Parish Council: Subject to the following comments, the Parish Council support the application:

- although it is agreed that the suggested wording of 10% per annum restriction upon the use of 44t HGV's addresses the issues previously raised over a longer 12-month period, additional wording should be added which includes reference to a maximum of '10% per annum and no more than 10% per day' because, on the basis of the current suggested wording, there would be nothing to stop the applicant running 44t HGVs for several weeks at a times before then reverting back to smaller vehicles;
- the larger HGVs should be restricted to five 44t movements per day or one 44t movement every 2 hours in order to support the application;
- clarification is required on the location of the power supply for the speed camera and the area to be covered by a prospective 40mph speed limit [these are not matters proposed to be covered by condition and would require the input of other external bodies such as the Highway Safety Team and the Camera Safety Partnership, hence the requirement for a contribution rather than the works to be carried out by the applicant];
- clarification is required on the calculation of figures for the funding to be secured through the Unilateral Undertaking to ensure a sufficient contribution is secured; and
- a condition should be included preventing right turning out of the site to avoid unsuitable routes through Shaugh Prior Parish (backed up by a CCTV camera to be provided by the operator).

4.6 Cornwood Parish Council: no response received.

4.7 National Highways: no objection as the proposal is unlikely to result in an unacceptable impact on the safe operation of the A38 trunk road.

4.8 Environment Agency: no objection.

4.9 Natural England: no comment.

4.10 Historic England: suggest that DCC seek the views of internal specialist conservation and archaeological advisers.

4.11 Cornish Chamber of Mines and Minerals: no response received.

4.12 Devon Wildlife Trust: objection as insufficient evidence provided regarding Biodiversity Net Gain.

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- 4.13 Devon RIGS Group: no response received.
- 4.14 National Grid: no response received.
- 4.15 Mineral Valuer: no response received.
- 4.16 DCC Highways: No objection subject to suitable conditions and securing a package of highway safety measures.

The mine will still have the same maximum daily HGV trip restrictions in terms of numbers (restricted to 50 per day max). Aggregate export vehicles typically consist of 20 tonne tippers. Concerns have been raised that this approach may mean larger 44 tonne vehicles could be utilised and therefore have a greater burden on the road network both in terms of integrity and safety. The applicant has agreed to a condition to cap the overall numbers of 44 tonne vehicles being utilised to a maximum of 10% per annum (so five per day or one trip per two hours roughly). This is accepted by Devon County Council as a Highway Authority.

The removal of the weekly and annual caps could lead to a higher potential frequency of reaching the maximum 50 HGV trips per day throughout the year if market condition dictate; however, it is considered on balance with sufficient mitigation the proposals could be made acceptable with sufficient mitigation. The applicant has been asked to widen the B3417 for approximately 120m at the southern end (before entering Plymouth's jurisdiction) under a S278 legal agreement. This would be a significant improvement in terms of scale and kind and would benefit all users of the B3417 including the existing businesses. Plans have been drawn up, safety audited and are in principle agreed subject to detailed design. It is the intension that these works will be secured via "Grampian" condition and or legal agreement.

The applicant has also agreed that a condition will be imposed restricting secondary aggregate HGV movements from turning right out of the main site access to ensure that drivers use the most appropriate part of the road network to reach the strategic road network.

The B3417 between the mine access and Lee Moor has previously been improved as part of the reopening of Hemerdon mine, which has resulted in a road that has proved safe in terms of HGV vehicle movements, but unfortunately has introduced an issue of anti-social driving and riding along its route. A package of measures to be funded by the applicant has therefore been requested.

DCC Highways request conditions covering the following:

- implementation of highway improvements before the tonnage exceeds 4,000 tonnes per week;
- installation of signage at the site entrance to prohibit right turns by laden HGVs carrying secondary aggregates;
- a restriction on numbers of HGVs in excess of 32t laden weight to 10% of overall HGV numbers; and

- tonnage not to exceed 4,000 tonnes per week until the applicant has submitted a revised traffic management plan to improve the safety of Bridleway No 39 where it crosses the mine access road.

- 4.17 DCC Landscape: the proposal would not result in any significant change to the character of the area affected or visual amenity of those along the permitted route, given it is already influenced by the movement and noise of HGV traffic from Hemerdon mine. The main impacts would be from the consequential road widening and recommend conditions on the S278 agreement regarding protection of tree roots during construction and securing appropriate compensation planting. It is also expected that such planting would include appropriate replacement of the hedge to the east to restore its integrity as a continuous hedge and enrichment with a more diverse range of species. When selecting suitable sites and species for compensatory tree planting the applicant should refer to Devon Local Nature Partnership's 'Right Place Right Tree' guidance and the 'woodland planting considerations map'
- 4.18 DCC Ecology: no objection to the variation of Condition. Some comments on the widening of the B3417 if planning permission should be granted: one tree will require root protection measures; a detailed method statement should be required prior to commencement of works for protected and notable species; a Construction and Environmental Management Plan (CEMP) is required to ensure protection during the initial site clearance and the road widening. Replacement tree planting should be carried out as included in an agreed Arboricultural Method Statement.
- 4.19 DCC Public Health: no comment.
- 4.20 DCC Flood Risk Management: no in-principle objections, and it is noted that issues of surface water management relating to the off- site highway improvements would be dealt with by Devon Highways.
- 4.21 DCC Historic Environment: no comment.
- 4.22 DCC Public Rights of Way: the Traffic Management Plan should be amended to properly consider the significance of the bridleway and equestrian use, to include setting out appropriate measures to safeguard and improve the crossing point with the access road. Examples include raising driver awareness of the crossing point through site induction and instructions, and also clear signage.
- 4.23 DCC Climate Change: no response received.

5) Advertisement/Representations

- 5.1 The application was advertised in accordance with the statutory publicity arrangements by means of a site notice, notice in the press and notification of neighbours by letter (including those who had made representations on DCC/4314/2022). As a result of these procedures 345 representations have been received from members of the public, mostly from Plympton and all of which are objections.

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5.2 Most raise general concerns about the increase in HGV traffic in an area where the perception is that it is a residential area, already congested and has unacceptably high usage by HGV traffic. Additional concerns are road safety for pedestrians and cyclists (in Plymouth) and horses (in Devon) due to increased speeds and volume, the impact on the fabric of the roads, residential amenity and health impacts in Plympton (noise, dust, vibration). Other representations mention concern that the tungsten mine would only produce aggregates, that there is no need for aggregates, that it would compete with existing producers or that aggregates would be exported out of the local area. A number of objectors raise the issue of an alternative road straight to the A38 avoiding Plymouth roads completely.

5.3 A number of organisations and public representatives have also commented:

Plymouth and District Civic Society object as roads in Plymouth cannot cope with the present tonnage from the site, are already struggling to cope with the size of lorries that already use the roads and the sheer volume of traffic, and disruption to businesses and residents is unacceptable. Strongly object to the tonnage cap being removed.

Plymouth Councillors Beer, Darcy, Harrison and Nicholson, who are City Councillors for Plympton St Mary ward, have raised objections on the basis that roads in Plympton are already being damaged by HGVs from the mine and other quarries in Devon; cumulative impact of increased HGV movements will cause network capacity issues, especially at Deep Lane Junction; the applicant has demonstrated no evidence of need to use 44t HGVs and no evidence of how they would be controlled; Strode Road has recently had to be resurfaced again which is paid for by Plymouth taxpayers; this proposal would increase the number and possibly the size of vehicles; there is also speeding, noise and vibration as well as air pollution from diesel and tyre wear (especially from 44t vehicles); safety concerns as the haul route passes schools; hours should be constrained to avoid school opening and closing times; measures should be implemented by both Highway Authorities to reduce speeds from Colebrook along Newnham Road; HGV movements already outside operational hours; no benefit to Plympton residents; the proposal is not sustainable as it will impact the sustainability of other producers in the area; alternatives to Plympton roads have not been pursued through a comprehensive access strategy, contrary to Policies in the Joint Local Plan; and authorities should work together to find a solution.

Plympton St Mary Neighbourhood Forum: object as the proposed route for these lorries is in an area which is already heavily congested, and it passes the entrance to a primary school, medical centre and along roads close to residential properties; the impact of these huge vehicles on local traffic and infrastructure is unacceptable to residents and businesses; there are already a significant number of lorries from existing quarries in the area, and these lorries have a detrimental effect on the environment in terms of dust, noise etc. which is unacceptable and would cause serious detriment to properties which adjoin the route; the proposal to remove the cap on the amount of tonnage which can be transported should not be implemented; and the quality of life of residents and the ease of movement for local businesses must be taken onboard.

Sir Gary Streeter MP: although supporting Tungsten West as a mining company, does not support this application or any move to increase lorry movements through Plympton. There is existing congestion and queueing made worse by the traffic generated by the Aldi supermarket. To add a significant number of lorry movements to this would be wrong and may tip the road system over the edge.

British Horse Society: objection based on the location of the Bridleway (no **) along the B3417 being currently “unusable” due to high-speed motorcycles and existing heavy traffic. Proposed increase in vehicles will further exacerbate this. DCC road safety raised concerns during the previous application (DCC/4314/2022) and BHS ask that this is given serious weight in the determination of the application.

6) Planning Policy Considerations

- 6.1 In considering this application the County Council, as Mineral Planning Authority, is required to have regard to the provisions of the Development Plan insofar as they are material to the application, and to any other material considerations. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that where regard is to be had to the Development Plan, the determination shall be in accordance with the Development Plan unless material considerations indicate otherwise. In this case, the Development Plan policies are summarised below and the most relevant are referred to in more detail in Section 7.
- 6.2 Devon Minerals Plan (adopted February 2017)
Policies M9 (Development at Drakelands Mine); M10 (Secondary and Recycled Aggregates); M17 (Biodiversity and geodiversity); M18 (Landscape and Visual Impact); M22 (Transportation and Access); M23 (Quality of Life); M26 (Cumulative Effects) and Policy M27 (Restoration and Aftercare).
- 6.3 Plymouth and South West Devon Joint Local Plan (Adopted March 2019)
Policies DEV1 (Protecting Health and Amenity); DEV2 (Air, Water, Soil, Noise, Land and Light); DEV29 (Transport); SPT1 (Delivering sustainable development); and SPT12 (Strategic approach to the natural environment)
- 6.4 Other material planning considerations include:
- National Planning Policy Framework
 - Planning Practice Guidance – Minerals

7) Comments/Issues

- 7.1 It is considered that the main material considerations in the determination of the proposed development are: planning policy; need and market considerations; sustainability considerations; impact on the highway network; highway safety; noise and proximity to residential properties; air quality and health; flooding; nature conservation; landscape; and climate change.

Planning Policy Considerations

- 7.2 The principal planning policy considerations relating to this proposal are Devon Minerals Plan Policies M9 and M10.

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- 7.3 Policy M9 seeks to protect “The steady and adequate supply of tungsten and tin from within the Drakelands Mineral Working Area defined on the Policies Map will be maintained by permitting proposals: (a) that will enable completion of the approved development...”. The applicant has stated that the increased export of the secondary aggregates will “support the Hemerdon Mine Business Plan and funding model and support the 238 direct jobs and associated indirect jobs related to the mine operations”.
- 7.4 Policy M10 supports the continuation of processing of secondary aggregates at locations close to the source of the materials and to Devon’s main settlements, and/or at an operational mine. Paragraph 5.2.1 of the Plan recognises that “secondary aggregates may also be obtained from the mineral waste generated by the Drakelands tungsten operation”.
- 7.5 There have been objections that the material coming from the mine is not a secondary aggregate and that the site might be mined only for aggregate production. The approach to secondary aggregates in mineral planning is different to land won ‘primary’ crushed rock or sand and gravel as it recognises that the material is produced as a by-product of other operations that would have occurred in any case.
- 7.6 The production of secondary aggregates at Hemerdon could only be ancillary to the production of tungsten and tin, and the applicant has stated that all Hemerdon aggregate products will have been crushed and gone through an initial X-ray Transmission Ore Sorting (XRT) process. This process involves rejecting non tungsten bearing rock much earlier in the process, reducing the amount of material passing through the secondary process plant before it is crushed into much smaller fractions as a part of the separation process.

Need and Market Considerations

- 7.7 As requested in the pre-application advice, the applicant has provided an aggregates market and sustainability analysis which concludes that “combined analysis of previous aggregate sales in conjunction with future market demand has demonstrated that the Hemerdon aggregate products have the ability to displace and reduce the increased impacts associated with primary production and longer haulage distances”. The table in Appendix 2 indicates that this proposal could increase the overall amount of aggregate exported in a year from 150,000 tonnes which is the current cap to approximately 250,000 tonnes.
- 7.8 The applicant has stated that “the production of aggregates would provide benefits to the operation through the reduction of waste volumes requiring long term storage on site, increasing the potential for mining more primary ore tonnes and/or reducing the environmental liability associated with restoration and aftercare; generating an additional source of revenue, providing a stable income to reduce the operating costs of the mining operation and limit exposure to fluctuations in commodity prices and providing a sustainable, low-carbon footprint secondary aggregate for local businesses increasing both TW [Tungsten West] and the customers ESG [Environmental Social and Governance] credentials as a result”.

- 7.9 The 12th Devon Local Aggregate Assessment [LAA] (November 2023) notes that the major source of secondary aggregates in Devon is the by-product from the extraction and processing of china clay in the Lee Moor area which in 2022 accounted for 85% of the County's production of secondary aggregates. Hemerdon Mine is identified as a potential source of secondary aggregate in the LAA.
- 7.10 The Devon Minerals Planning Monitoring Report 2021(February 2023) reports that the MPA are underdelivering on their objective to have a 20% proportion of total sales of land won and secondary aggregates within wider Devon accounted for by secondary aggregates, with the latest figure stated as 17.7%.
- 7.11 Much of the secondary aggregate produced in Devon already comes from the mineral sites to the north of Hemerdon Mine associated with the production of china clay, and the export of aggregates on the existing (and proposed) HGV haulage route has been operational for many years. These sites combined produced over 500,000 tonnes of secondary aggregates in 2022 and are identified in the LAA and the Minerals Plan as well placed to deliver secondary aggregates into the Plymouth and South West Devon markets.
- 7.12 The provision of secondary and recycled aggregates is seen as a less carbon intensive means of providing aggregates required by the construction sector. In recognition of this, the Government has determined that the product does not carry the tax liability of materials produced for their own sake (primary aggregates) and, therefore, the product is cheaper to produce and seen to be competitive in the market.

Overall Sustainability Considerations

- 7.13 A number of objections have been raised regarding the sustainability of the proposal with many commenting on the use of diesel HGV trucks to haul the material to the destinations where it will be used.
- 7.14 There are always concerns raised regarding the use of transportation in this way, and some commentators have raised the issue of whether the product is indeed a "secondary" aggregate.
- 7.15 The applicant has stated that some of its aggregate product may require further or secondary processing (screening and crushing to make specific grades, but they have confirmed that all of their products will have been crushed and gone through X-ray Transmission Ore Sorting (XRT) as a part of process to win tungsten and tin. The product is therefore a 'secondary aggregate' as it would be produced in any case.
- 7.16 The applicant accepts that, due to this further processing, the use of the recycled emissions factor is not appropriate, but with the absence of an accepted emissions factor for this situation the applicant considers it appropriate that a qualitative assessment indicates that this secondary aggregate would have a lower emissions intensity than primary production from hard rock quarries or naturally occurring sand and gravel. It would not therefore be appropriate to

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consider carbon emissions that would be emitted through the primary processing stage as these would happen in any case and the material would go to the tip.

- 7.17 With relation to concerns raised about this site flooding the local markets, and being transported long distances, the applicant has stated that the majority (75%) of aggregate products sold between 2021 and 2022 were sold within a 20 miles radius from the Hemerdon mine site, with 94% of all products being sold within a 30 miles radius of the site. They have commented that as they do not run their own fleet of haulage trucks that they do not have complete control over the destination of the products but that in terms of most definitions, 30 miles would qualify as 'local'.
- 7.18 Additionally, information has been provided about the relative costs of haulage to the value of the product which does indicate that due to transportation costs, there is little benefit in transporting it for long distances and any sales outside Devon and Cornwall would only be 'marginally' profitable due to the transport costs.
- 7.19 Policy M22 of the Devon Minerals Plan requires that "within geological constraints, mineral development should minimise the distance that minerals are transported whilst maximising opportunities for sustainable transportation and access by a variety of modes".
- 7.20 It is clear that the site is slightly closer to the Plymouth area markets than the existing secondary aggregate production sites to its north and considerably closer than Cornwall where secondary aggregates might be sourced from the China Clay quarries around St Austell. It is an existing site and operation and, whilst the means of access is limited to the existing road network, it would be hard to find other modes of transport where the material is being produced. There is a railway to the south but the scale of this application would be unlikely to justify the provision of rail access even if it were to be possible within the topography.

Highways and Traffic Issues

- 7.21 Plymouth City Council highways officers and National Highways were consulted on the pre-application for this proposal as the existing signed HGV routing between the Lee Moor quarries and Hemerdon Mine and the strategic highway network (the A38) passes through commercial and residential areas of Plympton. This route follows the B3417 to Glen Road through an established industrial estate, and is then signposted to the A38 via the B3416 and Sandy Road (although until recently HGV traffic also used to pass along Hillcrest Drive and the Ridgeway) (see Plan 2).
- 7.22 Existing congestion, safety and road damage in Plympton as well as the clear view of local residents that it is a residential area unsuitable for use as a haulage road has been raised by the majority of local objectors. Strode Road, in particular, is considered to be very busy as a new Aldi store has recently opened there, and there have been issues with the road construction on the new adjacent roundabout.

Overall Vehicle Numbers

- 7.23 The transport figures in the applicant's Transport Assessment for recorded flows of traffic both on the B3417 immediately to the south of Hemerdon Mine, and on Glen Road in Plympton indicate that the average hourly movements of traffic were 147 on the B3417 near the mine but 1,385 at Glen Road, indicating that most of the traffic arises locally.
- 7.24 The mine is already permitted to export 50 loads per day for seven days a week, which equates (over a 10 hours' day as proposed) to approximately five two-way trips (10 movements) per hour. The tonnage caps in the current Condition 19 would halt the export after 6,000 tonnes per week or 150,000 tonnes per year; therefore, unless the trucks were not leaving fully laden the existing conditions would be unlikely to lead to seven days per week running or running all year (see Table 1).
- 7.25 The County Council highways officer has noted that the mine will still have the same maximum daily HGV trip restrictions in terms of numbers (restricted to 50 per day maximum). It is thought that the removal of the weekly and annual caps could lead to a higher potential frequency of reaching the maximum 50 HGV trips per day throughout the year and, with this in mind, the County Council has asked the applicant to widen the B3417 for approximately 120m at its southern end before entering Plymouth's jurisdiction under a S278 legal agreement. This would be a fairly significant improvement in terms of scale and kind and will benefit all users of the B3417 including the existing businesses.
- 7.26 These plans have now been agreed, it is the intention that these off-site works will be secured via a 'Grampian' condition to cover the works being carried out before the revised Condition 19 comes into effect and secured via a legal obligation and a S278 agreement.
- 7.27 The B3417 between Plympton and Lee Moor has already been improved by the previous mine owners as part of the reopening of the mine. This involved the construction of two new lengths of road, one bypassing the narrow Newnham Road and another length to accommodate the Mine Waste Facility to the north of the mine entrance. In highway terms, this has resulted in a road that has proved safe in terms of HGV vehicle movements, but which unfortunately has introduced an issue of anti-social driving and motorcycle riding along its route. This is evidenced by the number of serious motorcycle collisions that have occurred on the B3417 since the new section has opened. Before the road was improved this road had no such collision history. Firstly, careful consideration is being given to the new proposed widened section of road mentioned above so that a similar scenario is avoided as best as possible. Secondly, in order to help reduce speeds and anti-social driving to the north of the mine access, Devon County Council has requested a package of measures to be funded by the applicant, including:
- road lining;
 - educational signage;
 - contribution to the costs of the introduction of a 40mph speed limit;
 - contribution to the costs of a design/safety audit;

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- contribution to the costs of provision of a speed camera; and
- laying a power cable from the site entrance office to the B3417 to power the speed camera.

7.28 These off-site works would also be secured through the Unilateral Undertaking by the applicants who have agreed to the requirements as set out in the highways response based on pre-application discussions with the applicant and highway authorities.

Size of HGVs

7.29 The potential size of vehicles was raised by Plymouth City Council, Sparkwell and Shaugh Prior Parish Councils as well as a number of objectors. There is concern that, should the operator use the larger 44 tonne vehicles, then there could be more road damage in Plympton, higher emissions due to engines under 'strain', and more pollution from tyres and brake pads as well as a much larger amount of aggregate being released into local markets.

7.30 The application states (with relation to the Unilateral Undertaking) that the applicant would be 'amenable' to including an occasional use limitation and the applicant has clarified in writing that they would be willing to accept a condition that no more than 10% of all movements are made by the 44T articulated vehicles. The County Highway Authority has confirmed that this is accepted and, if this application is approved, it is intended that this condition would apply with a requirement for the operator to provide weighbridge records to demonstrate compliance.

7.31 It should also be noted that the existing aggregate operations to the north of the site are not so restricted. The request from Shaugh Prior Parish Council that the use of 44t vehicles is further restricted to no more than 10% on any given day is noted but it is likely to be onerous in terms of management of contracts and would not reduce the overall numbers. The operator has explained that the removal of the caps is necessary to enable them to meet delivery contracts without running up against tonnage caps; similarly, the restriction to only 10% per day using 44t vehicles might restrict the hauliers that they can enter into contracts with and it would not alter the overall numbers which would remain restricted to 10% per annum. If a specific contract with a haulier using 44t trucks was implemented, then the level of usage would have to be reduced over the remaining period of the year. The national weight restriction is 44t and no other operator is so restricted.

Plymouth-specific Issues

7.32 Plymouth City Council commented in their objection that "given the significant increase in the export of Secondary Aggregates, the applicants should have investigated providing another route to takes construction and other heavy goods traffic more directly to the A38, avoiding Plympton's urban road network in line with paragraph 4.20 of the adopted Plymouth and South West Devon Joint Local Plan". A number of objections also mention this potential alternative.

7.33 However, the relatively minor nature of this proposal in itself would not justify requiring a whole new road which would in itself have significant environmental

impacts. When commenting on that possibility during the previous application in 2022, the proposal to use Ledgate Lane as an alternative was not supported by DCC highways due to the steep gradient and visibility issues as well as the need to use a bridge over the mainline railway.

- 7.34 Objectors also mention the proximity of schools, nurseries, play areas and a community centre along the route through Plympton. However, this is already an established HGV route and the overall increase in numbers should the applicant choose to export 50 loads a day for five days a week would be unlikely to cause any severe impact. Through the mainly residential area, Glen Road, the road is of good width with footways behind verges and few direct residential access points.
- 7.35 There appears to be a perception from a number of objectors that existing traffic levels and poor driving are caused by vehicles coming from Hemerdon Mine, but the mine has not been operational for some years now and the mine has not been exporting aggregate for more than a year.
- 7.36 During the trial export of secondary aggregates there were no complaints made to the Mineral Planning Authority regarding increased HGV movements or safety - had there been the trial would have been stopped under the condition applied to the trial.
- 7.37 Advice in NPPF Paragraph 111 states that “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”. However, none of the highway authorities have gone as far as to say that the likely impact would be severe, and this route through Plympton is used by traffic from all of the mining areas to the north as well as traffic arising from the industrial estate in Plympton through which it passes. It is the designated haul route specified for traffic to Lee Moor and specifically signposted from the A38. National Highways were consulted and the numbers projected have not led to any request to restrict numbers across the peak period at Deep Lane Junction which was a concern raised when the proposed numbers were higher.
- 7.38 There is no existing alternative route, and the current route was significantly improved by the previous operator of the mine by providing a link road avoiding the narrow Newnham Park route. One objector suggested that a circular route be adopted re-using the old Newnham Valley route, but this is now established as an alternative route for horse riders, cyclists and pedestrians and has a weight restriction on it. The current route was designed for HGV traffic and enforcing such a route would only affect the five trips (10 movements) an hour from the Hemerdon Mine and could not apply to the existing traffic from Lee Moor in any case.
- 7.39 The comments of Plymouth City Council regarding stopping movements during school pick up and drop off times are noted but, at five trips per hour, this is not a significant uplift and restricting the number of hours would concentrate the remaining movements into a shorter period. The applicant has indicated that they

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do not consider such a condition to be reasonable given that the other HGV traffic in this area is not restricted in this way.

- 7.40 It appears that the damage to roads in Plympton is an existing situation and it is difficult to conclude that the proposed increase in annual movements could justify a contribution from a single operator. Advice from DCC highways is that requiring contributions for maintenance is not supported by legislation. Plymouth City Council was asked to elaborate and specify what they would wish for, and their subsequent comment was that they would not now wish to secure a contribution for general road maintenance. They have not elaborated on any required road safety measures, although they did mention that it was their view that they could be secured by DCC for specific projects or mitigation.

Bridleway

- 7.41 There have been concerns raised about the safety of the existing bridleway (Sparkwell Bridleway 41/Shaugh Prior Bridleway 72) along the B3417 which was constructed as a requirement of the original legal agreement in 1985. This route was created in part to replace a north-south bridleway over Crownhill Down which has been lost to the mine tip but which would be replaced in the longer term once the mining operation ceases. It is noted that these issues have been raised by the Shaugh Prior Parish Council and others as well as the British Horse Society.
- 7.42 A second bridleway (Sparkwell Bridleway 39) runs along the mine access road, crossing it close to the entrance gate. There have been no reports of issues with this as traffic is either slowing to stop at the gate or just having passed through it to leave the site. It is therefore moving slowly by the crossing point where there is good visibility. Nevertheless, the PROW officer has requested that the existing Traffic Management Plan (TMP) should be amended to properly consider the bridleway and setting out appropriate measure to safeguard and improve the crossing point with the access road.
- 7.43 The applicant has stated that the front gate to the mine is controlled by a barrier requiring vehicles to stop on entry and exit. Trucks are therefore stopped adjacent to where the bridleway crosses the road but the applicant is willing to place an additional sign in this location to warn users and trucks of the need for caution and this could be included in the Unilateral Undertaking. It is proposed that requiring the re-submission of the TMP associated with a condition requiring the sign to be in place before the export caps are removed would cover this point in the planning permission rather than the legal agreement.
- 7.44 The issues with speeding on the B3417 road are a matter of public record and concerns about widening the road to the south increasing overall speed along the whole length are noted.
- 7.45 With relation to this particular application, with the exception of managing the crossing of Sparkwell Bridleway 39 across the site access road by the mine entrance, all HGV traffic is expected to arrive and depart via Plympton and therefore would not increase the HGV movements adjacent to Sparkwell Bridleway 41/Shaugh Prior Bridleway 72.

- 7.46 These matters can be managed by new conditions requiring the review of the TMP and a requirement that HGV traffic leaving the mine should turn left along the B3417 to the strategic road network onto the A38 as per the routeing submitted. The package of safety measures contained within the Unilateral Undertaking is intended to manage the existing concerns about speeds all along this road and would support the introduction of a speed limit and safety camera.

Conclusions on Highways Matters

- 7.47 Devon Minerals Plan Policy M22 states that mineral development will be permitted where it can be demonstrated (where appropriate through a Transport Assessment) that it would not have a significant effect on road safety or network capacity, that negative effects can be mitigated appropriately (through a vehicle routeing strategy/funding or improvements) and public rights of way shall be maintained or diverted where feasible ensuring no adverse impact on the safety of the network.
- 7.48 It is considered that these conditions are met as there are no fundamental network objections from either Highway Authority in terms of capacity, the applicant has provided a routeing strategy following the existing HGV haulage route and has committed not to send laden HGVs north onto the minor road network through Shaugh Prior Parish avoiding Sparkwell Bridleway 41/Shaugh Prior Bridleway 72 and requiring the applicant to alter the construction management plan to ensure that the crossing of Sparkwell Bridleway 39 is considered would accord with this policy. The part of the policy requiring encouragement for other methods of transportation such as wharves or rail sidings is not practical in this location.

Noise and Proximity to Residential Properties

- 7.49 There are very few properties within close proximity to the road between the site entrance and the Devon County Council boundary on the edge of Plympton. Most objections have come from residents in Plymouth who have expressed concern about increased noise, dust and danger from any additional HGV movements.
- 7.50 It should be noted that the HGV routeing from Lee Moor and the industries in that area have always passed along the existing lorry route through Plympton to the A38 at Deep Lane junction. The route is also used by HGV traffic coming from the large Industrial estate in Plympton.
- 7.51 Local residents have expressed concern about cumulative impacts including traffic from Sherford and other new commercial developments in Plympton including the new Aldi store, and they have concerns about additional and larger vehicles increasing the background noise.
- 7.52 As the mine can already operate at the requested level of 50 export movements per day (unrestricted by size of vehicle or time of day) then the only change would be the potentially increased number of running days rather than the intensity of movements on any given day.

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- 7.53 It is intended that the introduction of restrictions on weekend and holiday or early morning/evening movements as well as the percentage of larger 44t vehicles would ameliorate the impact of the potential overall increase in numbers and help to meet concerns about use of gardens and footpaths during evenings and weekends although the overall contribution to the traffic levels in Plympton is small given the overall traffic levels.
- 7.54 Any noise from the processing of secondary aggregates on the mine itself is covered by the existing planning conditions and monitoring scheme attached to the mining permission.

Air Quality and Health

- 7.55 Plymouth Council in their objections have specifically raised concern that the potential use of 44T articulated vehicles with their increased loads will decrease the efficiency of each vehicle, and that this will potentially have an impact on air quality and human health through increased emission of nitrogen oxides from diesel powered trucks and particulates from soot-filled plumes of exhausts. Additionally, it is suggested that the emissions from tyre wear are strongly related to the vehicle's weight which means that larger HGVs pose a more serious risk residents in the vicinity.
- 7.56 The applicant has been asked to comment on the likely use of the larger trucks but has confirmed that only 7% of the trucks used during the temporary uplift period were articulated, and that they would be willing to accept a condition that no more than 10% of HGVs exporting aggregate should be the 44t articulated type.
- 7.57 The applicant has submitted an Air Quality Assessment (AQA) which identified the locations of sensitive receptors along the haul route (14 residential, two ecological (a Local Nature Reserve and a County Wildlife Site) and one community use (doctors' surgery). The AQA was accompanied and informed by detailed dispersion modelling based on pre covid (higher) background NO_x, NO₂, PM₁₀ and PM_{2.5} concentrations which have been obtained from the Defra background maps in the absence of any air quality modelling sites within Plympton.
- 7.58 The AQA notes that pollutant concentrations in Plympton are primarily influenced by traffic. In terms of human health thresholds, the mean concentration of NO_x at receptor locations is no more than 45% of the air quality standard of 40 ug/m³ and the concentrations of PM₁₀ and PM_{2.5} particulates are also lower than the air quality standard which would be reflected by the fact that the area has not been designated as an Air Quality Management Area by the City Council.
- 7.59 With relation to amenity, Policy M23 of the Devon Minerals Plan requires that health and amenity is protected from the adverse effects of mineral development and controlled to avoid any significant nuisance being caused to occupiers of dwellings or other sensitive properties close to the site or its transportation routes.
- 7.60 Whilst the concerns of Plympton residents are noted and understood, there will be no daily increase in traffic over that already permitted and the contribution in

Plympton would be low in respect of the overall numbers. The response from Plymouth in terms of air quality was principally based on concerns about the use of larger vehicles, so the proposed addition to the conditions restricting larger HGV numbers and operating hours are intended to ensure that contributions from this operation are not significant.

- 7.61 One objection was made on the basis that the production of secondary aggregate on the mine might increase dust. The activity of the production of secondary aggregate is ancillary to the principal mining operation and does not require planning permission in its own right. It is, however, subject to the planning conditions that already apply to the mining operation as well as a detailed environmental monitoring scheme. The mine owners are aware that all of the monitoring arrangements need to be in place before the mining itself recommences and so the aggregate production would be captured by the Conditions and schemes managing the mining and tipping.

Potential for Flooding

- 7.62 There are no flood risk implications caused by an increase on the overall number of HGV movements. Issues relating to the road and re-surfacing would, if planning permission is granted, be resolved between DCC highways and the flood risk management team to ensure that surface water is properly managed.

Nature Conservation/ Habitats

- 7.63 The objection by Devon Wildlife Trust regarding lack of Biodiversity Net Gain is noted. However, it is important to consider that the red line of this application relates only to the mine site itself as this application is to vary a condition of the original planning permission. The request for off-site road improvements has arisen from extensive preapplication enquiries and was requested by DCC highways officers. As the red line of this application cannot be extended to include the offsite works which are within the highway, these matters would be dealt with via a separate S278 highway agreement but only if planning permission is granted. The applicants included an ecological assessment for the off-site works but, as these do not in themselves require permission, this was asked for to demonstrate completeness and to be considered as a part of that separate legal process. Once the off-site highway works are agreed the applicant will be required to include the measures in the Unilateral Undertaking and the Construction Environment Management Plan associated with the S278 agreement.

Landscape

- 7.64 Policy M18 of the Devon Minerals Plan requires that mineral development (including its operational practices) should have regard to the special qualities, distinctive character and features of the landscape. The landscape character of this area is defined by mining activity both at Hemerdon and to the north in the Lee Moor China Clay operational areas. Landscape restoration is taking place on the periphery of the China Clay areas at Lee Moor but the first phase of restoration at Hemerdon was delayed when the mine went into receivership.

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- 7.65 The sale of secondary aggregates, above the calculations of the original consent, would reduce the amount of material going to the tip, but a certain amount is required in any case to support the tailings within the Mine Waste Facility. That is regulated in detail by an Environmental Permit and safety is the major priority.
- 7.66 The approved restoration concept accommodates the 100 million tonnes of tipped material into a very large landform restored on its surface to a mixture of woodland, and moorland. The removal of material from that landform could result in a lower landform, however, the conditions of the mining operation require detailed restoration proposals to be submitted at various stages of the development and these would be reviewed based on the available amount of material once mining recommences using the new ore sorters and process methods. The approved plans show the final (maximum) tipping levels but it was always understood that the vagaries of the metals prices and world markets might mean that of the mine ceased operations (as in 2018) restoration might have to be at a lower level and the County Council and underlying land owners jointly hold a restoration bond for this purpose.
- 7.67 Some objectors have raised concerns that, if less material goes to the Mine Waste Facility, the operator might seek to import material to make up the original levels. The operators have confirmed in writing that this would not be the case and the existing conditions also preclude this. Any restoration at a lower level would be subject to annual review under the existing conditions in any case. With large-scale long term mineral operations of this nature an element of review is always built in to ensure that restoration meets the current best practice of the time.

Other Environmental Considerations (Including Climate Change)

- 7.68 Paragraph 152 of the National Planning Policy Framework requires that “the planning system should support the transition to a low carbon future in a changing climate”, while Devon County Council has declared a climate emergency and committed to facilitating the reduction of Devon’s carbon emissions to net-zero by 2050. The scope for individual planning applications to contribute to these initiatives will be dependent on the nature and scale of the development being proposed, and relevant considerations are outlined below.
- 7.69 The provision of secondary aggregates as a result of permitted mining operations are considered to have less impact as the material is produced in any case ancillary to the primary use of the land. The operators acknowledge that this is an important consideration as they understand that the site has a lawful consent only for the production of tungsten and tin. The production of high-quality secondary aggregates sold through other mining operations is well established in Devon and especially Cornwall with the majority the material coming from the China Clay quarries in Cornwall and to a lesser extent from Lee Moor to the north of this site.

8) Strategic Plan

- 8.1 The Devon Strategic Plan 2021 – 2025 states that Devon County Council will invest in Devon’s Economic Recovery and will maintain and where necessary

improve our highway network...to help generate and sustain economic growth. The highways officers have identified an important highway improvement to be secured as a consequence of granting planning permission for this proposal which would benefit not only this business, but also the Internationally important China Clay operations to the north of the site which also use the same haul route through Plymouth to access the strategic road network.

9) Financial Considerations

- 9.1 The proposal raises no financial implications for the Council in its role of county planning authority.

10) Legal Considerations

- 10.1 This proposal has been managed in accordance with statutory requirements and there are no specific legal considerations. As the offer to improve the B3417 is via a Unilateral Undertaking under S106 the Town and Country Planning Act, this undertaking would need to be concluded and signed before the issue of any planning permission.

11) Equality Considerations

- 11.1 Regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty. Given the nature of the proposal and the measures within the recommended conditions, it is considered that no adverse impacts on persons with protected characteristics would occur.

12) Risk Management Considerations

- 12.1 This proposal has been managed in accordance with statutory requirements and no risks to the Council in its role of mineral planning authority are considered likely to arise.

13) Reasons for Recommendation/Alternative Options Considered

- 13.1 The Committee has the option of approving, deferring or refusing this planning application.
- 13.2 The only reason that the export of secondary aggregates from this particular site is controlled is through the wording of Condition 19. The export of secondary aggregates from existing mineral sites is normally regarded as being ancillary to the primary mining operation.
- 13.3 The proposal does not seek to increase the existing permitted daily number of movements but to 'stabilise' the output to enable the business to plan to meet contracts without running up against tonnage caps. It is clear that this is likely to increase overall numbers by increasing the running days over the course of a year but would not increase the existing permitted daily export levels (see table in Appendix 2).

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- 13.4 When the mine went into receivership a number of jobs were lost and there was concern about the future of the site. The tungsten remains unworked and, as tungsten is an internationally important 'critical mineral', it is unlikely that it would remain unworked given its status. Policy M9 of the Devon Minerals Plan clearly expresses support for the continued development of the mine. Government guidance makes it clear that minerals may only be worked where they are found and the aggregate created by the tungsten mine would be produced in any case.
- 13.5 This location is close to existing markets in Plymouth and South West Devon which are currently served by the importation of materials from the China Clay operations to the north but also from aggregate imported from Cornwall and elsewhere.
- 13.6 Government guidance on the application of conditions states that conditions must be necessary and reasonable. When the original condition was imposed, it was clear that there was uncertainty about the impacts of the potential export of secondary aggregates which had not been considered at that time. This planning application has assessed those likely impacts both in Devon and in Plymouth and it is clear that, although there are high HGV movements on the roads in Plympton, the concerns of objectors do not support a conclusion that the impacts would be 'severe' or that there would be an unacceptable increase in other impacts such as noise or dust/particulates. The NPPF states that: "Conditions which place unjustifiable and disproportionate financial burdens on an applicant will fail the test of reasonableness".
- 13.7 Since the original condition was applied, there are more HGVs on the roads but there is also a policy push towards the provision of secondary and recycled aggregates in locations proximate to their likely use. Furthermore, the operators have made it clear that the current Condition 19 would affect the viability of the business and, as the export of aggregates is an operation that would normally be considered as "ancillary" to the production of tungsten and tin then, on balance, the likely impact would not be so significant as to warrant refusal to vary this condition, given the undertakings on road improvements, the restriction on the weight of vehicles and the proposed new conditions restricting the routing to the north and the hours of operation. The condition of the roads and the concerns of Plymouth and objectors are noted, however, advice from the County highway authority is that the mineral planning authority cannot require contributions to deal with road damage in an adjoining local authority area.
- 13.8 Enabling the operator to increase the export of secondary aggregates would support the future of the mine and its jobs as well as delivering secondary aggregates into the local market in accordance with Policy M10. The material produced ancillary to the tungsten operation would otherwise go to tip and have to be replaced in the market by primary aggregates or secondary aggregates from other sites in any case.
- 13.9 In conclusion it is considered that the use of secondary aggregates where they are genuinely produced in association with the primary purpose of producing tungsten and tin is supported by general national and local planning policies (subject to resolving specific site based environmental issues) and will help the

County to meet its current target to provide 20% of aggregates produced from secondary sources.

13.10 The proposed restriction on the use of larger articulated vehicles, and the introduction of hours of operation is a control that does not currently exist on the site and the proposed hours of haulage Monday to Friday are more restrictive than those applied to the china clay and sand quarries to the north.

13.11 The highway improvements put forward as a part of the Unilateral Undertaking will help to ensure that the B3417 is a safer route for all of the HGVs coming from this site and the china clay quarries to the north and, whilst it is noted that there remain concerns about the routeing, it is not considered that the numbers involved could justify the requirement for this one operator to construct a new road which would in itself have practical and environmental impacts.

Mike Deaton
Chief Planner

Electoral Division: Bickleigh & Wembury

Local Government Act 1972: List of background papers

Background Paper Casework File
Date 24.08.2023
File Reference DCC/4365/2023

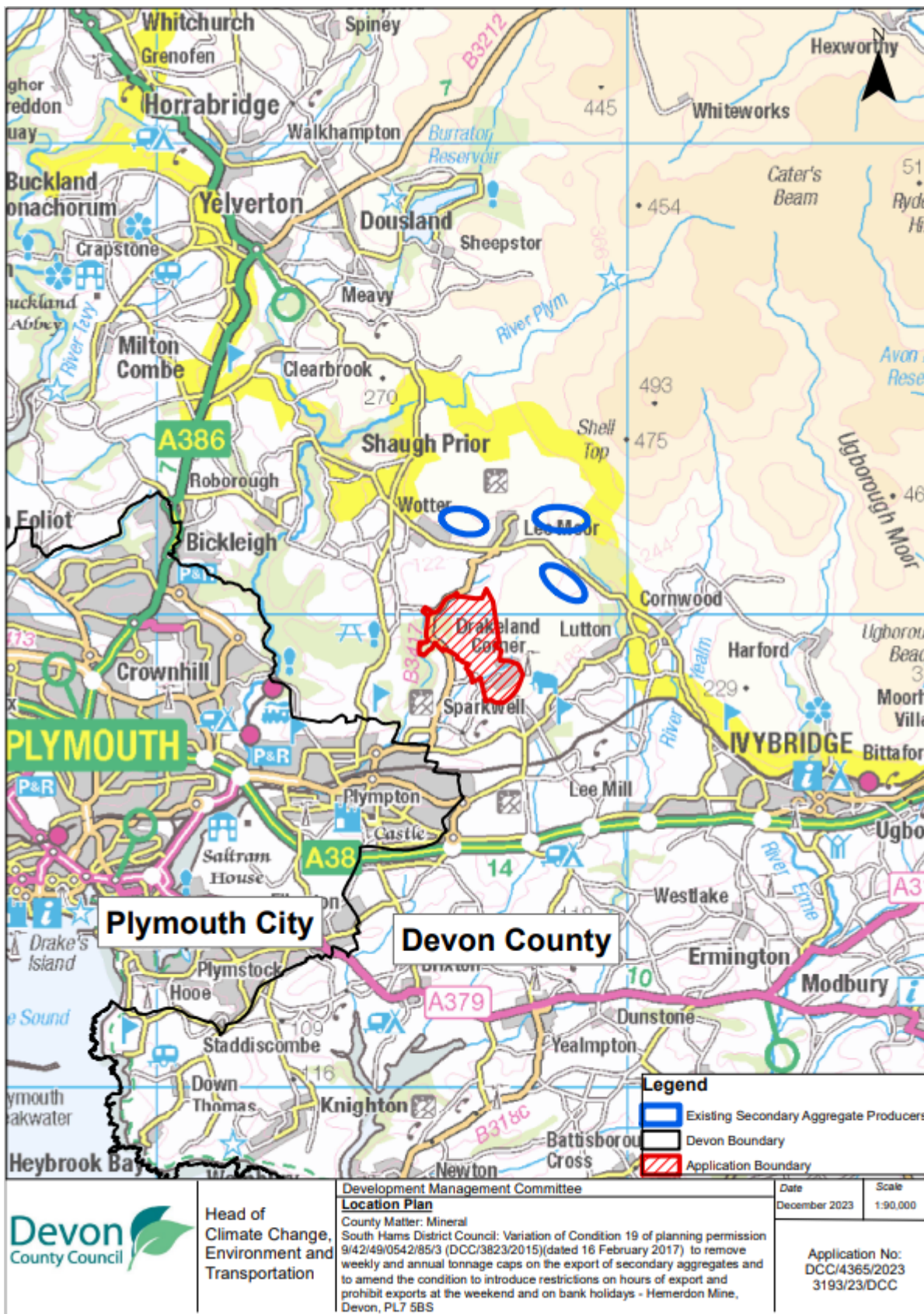
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sp171123dma
sc/cr/Variation of Condition 19 Hemerdon Mine Plympton
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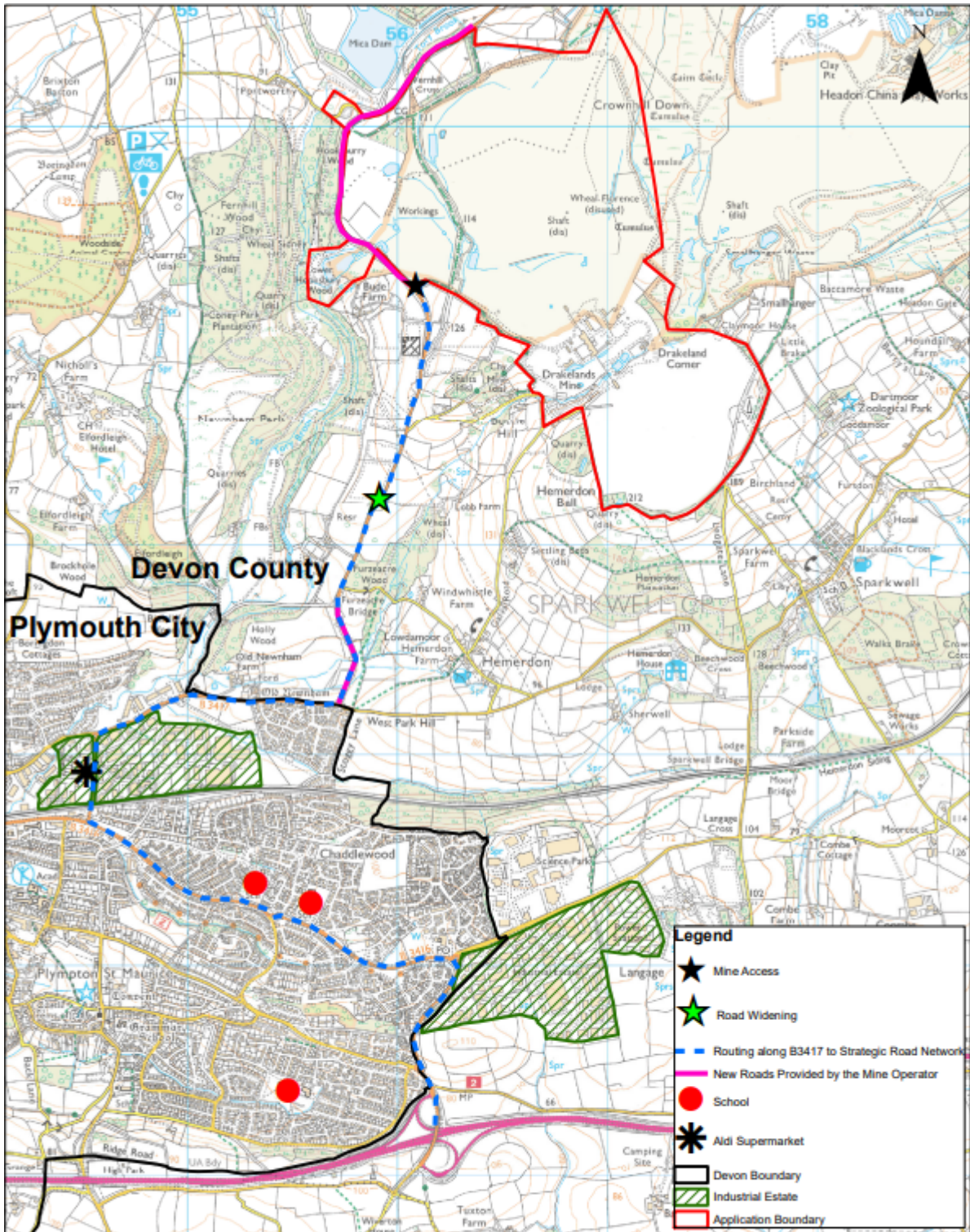
Agenda Item 4

Location Plan:



Plan 2: Site Context

CET/23/104



Head of Climate Change, Environment and Transportation

Development Management Committee

Site Plan

County Matter: Mineral
 South Hams District Council: Variation of Condition 19 of planning permission 9/42/49/0542/85/3 (DCC/3823/2015)(dated 16 February 2017) to remove weekly and annual tonnage caps on the export of secondary aggregates and to amend the condition to introduce restrictions on hours of export and prohibit exports at the weekend and on bank holidays - Hemerdon Mine, Devon, PL7 5BS

Date

December 2023

Scale

1:20,000

Application No:
 DCC/4365/2023
 3193/23/DCC

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Appendix 1 to CET/23/104

Planning Conditions

The planning permission issued under the County Council's reference DCC/3823/2015 shall be reissued subject to the following amended and new conditions (this previous permission may be found at this link:

<https://planning.devon.gov.uk/PlanDisp.aspx?AppNo=DCC/3823/2015>):

Condition 19 (Amended)

No waste other than that required to be transported to a suitably licensed facility and otherwise unable to be disposed within the site shall be transported from the site. The number of heavy goods vehicles transporting waste (that is not permitted to be disposed within the Mine Waste Facility) or secondary aggregate leaving the site shall not exceed 50 in any one day.

HGV movements shall only occur during the following specified periods: Mondays to Fridays 07:00 – 17:00. No HGV movements shall be permitted on Saturdays, Sundays or Bank Holidays.

There shall be no importation of waste materials to the site unless they are specifically required for restoration purposes as identified in the annual restoration proposals and the amount previously agreed by the Mineral Planning Authority. The operator shall provide to the Mineral Planning Authority details of the number of HGVs leaving the site carrying secondary aggregates or mineral waste over a 12 months period.

Reason: In the interests of highway safety and to ensure that the overall restoration profiles are considered in any movements of materials in accordance with Policies MP41 and MP56 of the Devon County Minerals Plan and Policies M18, M23 and M27 of the Devon Minerals Plan.

New Condition - Offsite Highway Improvements

The export tonnage shall not exceed 4,000 tonnes per week until such time as the applicant has implemented the offsite highway improvements set out in drawings 10668-HL-01 Rev F and 10668-HL-02 Rev B and in accordance with a construction and environment management plan (CEMP) which shall have been previously submitted to and approved in writing by the Mineral Planning Authority, and have received the written confirmation of the Highway Authority that the works are complete.

Reason: To ensure that the existing narrow stretch of the B3417 is improved before the number of running days is increased in the interests of highway safety and efficient operation of the route network in accordance with Policy M22 (Transportation and Access) of the Devon Minerals Plan and Policy DEV29 (Transport) of the Plymouth and South West Devon Joint Local Plan.

New Condition - Notification of Commencement

The applicant shall notify the Mineral Planning Authority in writing on the first date when the weekly export of secondary aggregates exceeds 4,000 tonnes.

Reason: For the avoidance of doubt.

New Condition - Left-hand Turn Only

Prior to notification of the tonnage increase (as required by Condition *) the operator shall have installed a sign at the site exit onto the B3417 instructing drivers of laden Heavy Goods Vehicles carrying secondary aggregates to turn left out of the site only, in accordance with details of the sign and its location that shall previously have been agreed in writing by the Mineral Planning Authority.

Reason: To ensure that HGV traffic uses the agreed lorry routing to the primary route network in the interests of highway safety in accordance with Policy M22 (Transportation and Access) of the Devon Minerals Plan.

New Condition - Weight Restriction

Not more than 10% of HGV traffic exiting the site and carrying secondary aggregates shall exceed 32 tonnes laden weight per annum. The operator shall keep weighbridge records of all vehicle movements and tonnages which shall be made available to the Mineral Planning Authority within seven days of request.

Reason: To reduce emissions, noise and damage to the highway network in accordance with Policies M22 (Transportation and Access) and M23 (Quality of Life) of the Devon Minerals Plan and Policies DEV1 (Protecting Health and Amenity); DEV2 (Air, Water, Soil, Noise, Land and Light) and DEV29 (Transport) of the Plymouth and South West Devon Joint Local Plan.

New Condition - Traffic Management Plan

The export tonnage shall not exceed 4,000 tonnes per week until a revised Traffic Management Plan indicating measures to improve the safety of Sparkwell Bridleway 39 where it crosses the mine access road is submitted to and approved in writing by the Mineral Planning Authority. Following its approval, the revised Traffic Management Plan shall be implemented and complied with for the duration of the planning permission.

Reason: In the interests of the safety of users of the public bridleway in accordance with Policies M22 (Transportation and Access) of the Devon Minerals Plan.

Appendix 2 to CET/23/104

Table 1: Comparison of existing permitted and proposed HGV movements associated with secondary aggregates export

Vehicle Type	Gross weight	Load Size	Max tonnage per day @ 50 movements	Export Movements per hour (average – <u>12 hour day</u>) @ 50 export loads per day,	Export Movements per hour (average – <u>10 hour day</u>) @ 50 loads per day,	Weekly Movements (current cap of 4k tonnes) – cut off after	Max running days per annum (current annual cap of 150k tonnes)	Max possible tonnage per annum (current)	Max possible tonnage per annum <u>proposed</u> (5 days per week – 252 days)**
3 axle rigid	26t	15t	750	4.1	5	5 days	200	150k	189k
4axle rigid	32t	20t	1000	4.1	5	4 days	150	150k	252k
articulated	44t	30t	1500	4.1	5	2.7days	103.4	150k	378k
4 axle rigid 90% + Articulated 10%	32t/44t	20t/ 30t	1050	4.1	5	-	-	-	264.6k* (proposed by applicant)

*At 10% 44t loads - 5 exports (10 movements) per day

** Removing weekends and Bank Holidays as proposed by the varied condition

CET/23/105
Development Management Committee
6 December 2023

North Devon District: Article 4 Direction to remove permitted development rights for mineral working for agricultural purposes
Location: Codden Hill, Bishop's Tawton, Barnstaple

Report of the Chief Planner

Please note that the following recommendations are subject to consideration and determination by the Committee before taking effect.

1) Recommendation

It is recommended that:

- (a) the non-immediate Article 4¹ Direction made on 13 January 2023 is confirmed with effect from 14 January 2024; and
- (b) in the event of any intervention by the Secretary of State for Levelling Up, Housing and Communities requiring amendment of the Article 4 Direction, such amendment be delegated to the Chief Planner in consultation with the Chair and Local Member.

2) Summary

2.1 This report seeks the Committee's approval to confirm the non-immediate Article 4 Direction as originally made on 13 January 2023, covering the area shown edged red in Appendix 1, to remove the following permitted development rights within Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ['the GPDO']:

Class C - mineral working for agricultural purposes, of Part 6 Agricultural and forestry

2.2 In seeking confirmation of the Direction this report considers the representations received as a result of the statutory consultation procedures.

3) Background/Context

3.1 An Article 4 Direction allows planning authorities to remove specified permitted development rights, contained within the GPDO, within a defined area.

¹ Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

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3.2 Permitted development rights allow certain works, subject to conditions and limitations, to take place without a planning application having to be submitted. An Article 4 Direction would result in the removal of these rights and a planning application needing to be made to the planning authority. The effect of an Article 4 direction is therefore not to prohibit development but to enable the planning authority to have control over the proposed development.

3.3 An Article 4 Direction should be made only where it is expedient, and it therefore requires justification. In applying the test of expediency, regard should be had to paragraph 53 of the National Planning Policy Framework [NPPF] and the Planning Practice Guidance [PPG]. The NPPF advises that use of an Article 4 Direction should be limited to situations where it is necessary to protect local amenity or the wellbeing of the area and should apply to the smallest geographical area possible. In addition, the PPG is clear that Article 4 Directions related to agriculture and forestry will need to demonstrate that permitted development rights pose a serious threat to areas or landscapes of exceptional beauty.

3.4 The process for making and confirming a non-immediate Article 4 Direction is as follows:

Stage 1 - The authority decides whether to go ahead and introduce a Direction setting a date in the Notice for when the notice will come into force which must be at least 28 days and no more than two years after representations can first be made, which is usually after the last publication/service date.

Stage 2 - Publication/Consultation stage. The authority:

1. Publishes the notice of direction in a local newspaper;
2. Formally consults with general members of the public and the owners and occupiers of every part of the land within the area or site to which the Direction relates over a period of at least 21 days; and
3. Places notices at the site for six weeks;

Stage 3 - On the same day that notice is given under Stage 2 above, the authority refers its decision to the Secretary of State who has wide powers to modify or cancel a Direction;

Stage 4 - Confirmation stage (current stage) - the authority cannot confirm the Direction until after a period of at least 28 days from publication/service of the Notice. Once a Direction has been confirmed, the authority must give notice of the confirmation in the same way as it gave notice of the initial Direction, and must specify the date that the Direction comes into force. A copy of the Direction as confirmed must also be sent to the Secretary of State.

3.5 The Council has followed stages 1 to 3 as set out above for the non-immediate Direction.

3.6 On 7 December 2022, this Committee considered Report CET/22/78 as to whether there was sufficient justification and expediency to make an Article 4 Direction at Codden Hill. It was proposed that permission granted by Class C - mineral working for agricultural purposes of Part 6 Agricultural and forestry of

Schedule 2 of the GPDO does not apply to development on land at Codden Hill identified in Appendix 1.

- 3.7 Report CET/22/78 can be viewed here, under item 36:
<https://democracy.devon.gov.uk/ieListDocuments.aspx?CId=131&MId=4516&Ve r=4>
- 3.8 Report CET/22/78 outlined the harm that is currently resulting from the permitted development rights being exercised on Codden Hill and which is likely to continue should permitted development rights remain. The report:
- highlighted that, if not adequately controlled, mineral extraction can cause irreparable harm;
 - demonstrated, alongside a report prepared by the County Landscape Officer, that permitted development rights pose a serious threat to areas or landscapes of exceptional beauty as there is potential for mineral working to erode or harm the following key characteristics and special qualities of the area;
 - highlighted that there is no opportunity to assess and consider potential harm to heritage assets, and the proximity of existing extraction areas to the Scheduled Monument means there is a real risk that any extraction will impact upon the setting and significance of that Scheduled Monument;
 - highlighted that a number of complaints have been received by the Mineral Planning Authority [MPA] and, given the proximity to residential properties to the area, there is the potential for adverse impacts upon people's quality of life, health and amenity;
 - highlighted that mineral working presents a risk to valued wildlife and priority habitats by way of dust generation and habitat removal, including changes to the water or air quality; and
 - addressed equality, legal and financial considerations, with consideration of some alternative options.
- 3.9 Following the Committee resolution to make the Article 4 Direction, the Direction was sealed on 13 January 2023 and a public consultation was held, as detailed in Section 4 below.

4) Consultation and Responses

- 4.1 A detailed summary of responses is contained within the Consultation Outcomes Report in Appendix 2 of this report, and the full representations received are available to view on the Council's website by clicking on the following link:
<https://www.devon.gov.uk/planning/article4/>.

In summary, notice was given by the MPA in accordance with paragraph 1(1) of Schedule 3 of the GPDO by way of:

- an advertisement in the local newspaper on 19 January 2023;
- site notices displayed at eight locations on 13 January 2023; and
- serving notice on the known owner and occupier of every part of land within the area to which the direction relates via recorded delivery on 13 January 2023.

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- 4.2 The notices contained the requirements of paragraph 1(4) of Schedule 3 of the GPDO, and a consultation, welcoming representations, was held from 13 January 2023 to 10 February 2023.
- 4.3 The notice and consultation were also publicised on the Council's website at: <https://www.devon.gov.uk/planning/article4/>.
- 4.4 In addition to these steps, nearby properties and other stakeholders were notified of the Article 4 Direction.
- 4.5 The Secretary of State was notified of the Article 4 Direction on 13 January 2023, and the Department for Levelling Up, Housing & Communities wrote to the MPA on 9 March 2023 acknowledging this notification. The MPA has not heard from the Secretary of State as to whether they consider the Direction fulfils national policy set out in Paragraph 53 of the NPPF on the use of Article 4 directions, and whether there is cause for intervention under Schedule 3, Paragraph 1(13) of the 2015 Order. It is understood that, even though the Article 4 Direction is under consideration, it does not prevent any of the processes associated with introducing the Article 4 Direction from going forward, although it should be noted that the Secretary of State has the power to modify or cancel an Article 4 Direction at any time.
- 4.6 As a result of the consultation, 23 responses were received, of which 16 stated their support for the Article 4 Direction. Nearly all of those supporting the Direction were local residents (14), as well as Landkey Parish Council and North Devon Council's Environmental Protection Team.
- 4.7 Those supporting the Article 4 Direction highlighted impacts that have already taken place from quarrying and raise concerns should quarrying continue. The common themes raised include:
- impacts on living conditions and residential amenity, such as noise, dust, floodlighting and implications on human health;
 - the landscape impact on Codden Hill as a distinctive landmark and a place of beauty, as well as, disruption to the peace and tranquillity of the area;
 - destruction to habitats;
 - surface water runoff contaminating drinking water; blocking drains; potentially causing flooding and land stability issues;
 - unsuitable road networks/junctions and damage to the highway; and
 - the impact upon an area used for walking and tourism.
- 4.8 Whilst not stating their support, a further resident made comments regarding the issues raised above. Some responses also questioned the need for the stone and state that house prices are negatively affected by quarrying.
- 4.9 Natural England stated they had no comments to make. No other responses from other stakeholders were received.
- 4.10 The remaining five responses were from landowners affected by the Article 4 Direction. The concerns raised are outlined and discussed in Section 5 below.

5) Comments/Issues

5.1 As set out in the Consultation Outcomes Report (Appendix 2 of this report), it is considered the concerns raised can be grouped into 7 main issues. This section discusses these issues and the Council's view as to whether the Article 4 Direction requires review.

Issue: The requirement for planning permission is expensive and time consuming, and applications could be refused

5.2 Paragraphs 3.11-3.12 of the Consultation Outcomes Report summarise the responses that highlight this issue.

5.3 The Council recognises that the need to apply for planning permission will be a new process for landowners that would not be necessary if permitted development rights remained in place. Going through the planning process will take time and result in expense to landowners. This additional cost was highlighted in paragraph 4.39 of Report CET/22/78, however, one response stated that the financial burden on landowners has not been considered.

5.4 Any potential applicant is welcome to engage in pre-application advice with the Council to ensure a proportionate application is made, which could reduce the cost of producing an application and the time for its determination. It may not be necessary for an application to be made for every extraction event, as implied in one response, as mineral permissions typically cover a number of years with an annual tonnage limit; therefore, this could be a one-off process. As is usual with mineral planning permissions, annual monitoring may be undertaken by the MPA and a review of conditions required every 15 years, which would be additional costs.

5.5 Any planning application would be considered on its merits and determined in accordance with the policies and provisions of the development plan.

5.6 Whilst this additional step for landowners is acknowledged, it is considered that the potential harm and the wider public interest which were outlined in Report CET/22/78 balance the financial implications for landowners. On this basis, it is not considered the Article 4 Direction requires amendment.

Issue: The GPDO already includes controls; mineral extraction for permitted development has been and is limited; and in any case, other methods of controls exist

5.7 Paragraphs 3.13-3.15, 3.19, 3.25 and 3.27 of the Consultation Outcomes Report summarise the responses that raise this issue.

5.8 Report CET/22/78 stated that: "mineral working with no control can be intrusive and cause harm to living conditions of neighbouring residents". One response said that it is incorrect as the GPDO that grants permitted development rights limits their extent.

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- 5.9 Paragraph 2.5 of report CET/22/78 includes the limitations of the relevant permitted development rights (namely that mineral extraction should be reasonably necessary for agricultural purposes; only for use on that agricultural unit; and excavation cannot take place within 25m of a metalled part of a trunk or classified road). The Council has found that there can be ambiguity over the definition of these limitations, while it can also be difficult to distinguish between stone extracted for legitimate agricultural purposes on the same holding and stone that is intended for sale to third parties. Aside from these limitations, as stated in paragraph 2.6 of Report CET/22/78, there are no other conditions for mineral development carried out under Class C. It is not considered that these limitations offer any protection to the local amenity, landscape or environment that would typically be included on mineral planning permissions, such as restoration requirements, hours of working and noise limits.
- 5.10 It is only by use of the Article 4 Direction, and through the requirement to seek planning permission, that the Council can have regard to the relevant policies within the Devon Minerals Plan which would allow for the protection to the local amenity, landscape or environment to be considered and secured through condition.
- 5.11 The responses from landowners imply that working is infrequent, and that it is unlikely that level of extraction is realistically going to be repeated given the existence of Enforcement Notices. It is correct that the extant Enforcement Notices for Overton Quarry and Horswell Quarry, and the Interim Injunction, which covers Codden Hill and is relevant to one landowner, are currently limiting some mineral working in certain locations taking place on Codden Hill. Given the existence of the Enforcement Notices, it is also correct that the County Council considers that permitted development rights do not exist at Overton Quarry and Horswell Quarry. In this sense, it is correct for one response to state that there is no uncontrolled working in these areas. It is, therefore, suggested by a landowner that the claim previously made by the Council that “should permitted development rights remain, uncontrolled expansion could take place and new sites could appear” is clearly unfounded. However, this matter is subject to separate appeal and court proceedings and, therefore, the outcome is uncertain and the Council still consider the Article 4 Direction is required across the full extent of Codden Hill.
- 5.12 One landowner response implies other processes provide adequate control, such as Environmental Impact Assessment regulations and Environmental Health legislation. Should development be considered ‘EIA’ development, in that it will have significant environmental effects, permitted development rights would not exist. Even development that is not EIA development could have adverse impacts on residential amenity and the local environment. For this reason, reliance on this process would not be considered effective.
- 5.13 Reliance on Environmental Health legislation is considered reactive. Development would not be required to put in mitigation measures in advance of taking place; control would be enforced following the event taking place. This allows adverse impacts to take place, rather than positively managing any impacts. Overall, it is considered the planning process would be the most effective way to managing mineral development for agricultural purposes.

Issue: The Article 4 Direction is not necessary for landscape protection

- 5.14 Paragraphs 3.18 – 3.21 of the Consultation Outcomes Report, Appendix 2, summarise the comments raised as to why the Article 4 Direction is not necessary for landscape protection.
- 5.15 The landowner responses generally suggest that amending the red line to exclude existing quarries would adequately address landscape and visual concerns and that some quarries do not justify inclusion in the Article 4 area given they have more limited visual impact than other more prominent ones.
- 5.16 The County Landscape Officer's report attached to Report CET/22/78 highlighted the exceptional landscape quality and characteristics of Codden Hill. It demonstrated that existing quarries on the south side of Codden Hill have resulted in substantial visual impacts on the landscape, and that future visual harm could arise from uncontrolled quarry extension of these. It is true that the visual impact of one quarry is likely to differ from another, along with scope to mitigate such adverse impacts to acceptable levels.
- 5.17 However, the analysis is that Codden Hill is perceived as a distinct feature in the landscape, and its quality and value can be appreciated through the network of rights of way and highways in and around it. The Article 4 Direction would help maintain its landscape and visual integrity. In addition, the effects of uncontrolled quarrying on the landscape are not just about visual impact. If it were, then amending the red line boundary to exclude existing quarries would be worth considering. However, this ignores the potential for uncontrolled quarrying operations to harm Codden Hill's "*strong sense of peacefulness with locally high levels of tranquillity*" which is enjoyed by people from publicly accessible areas and routes, and which is a key characteristic and valued attribute of the landscape noted in landscape character assessments and highlighted in the County Landscape Officer's report. The effects (and cumulative effects) of continued quarrying operations across this valued landscape could be substantial - including floodlighting, noise, and movement of quarrying vehicles. No contrary expert evidence has been provided. It is therefore maintained that such activity should be subject to planning control from a landscape and visual amenity perspective.

Issue: The Article 4 Direction is not necessary for protecting local amenity

- 5.18 Paragraphs 3.24 – 3.27 of the Consultation Outcomes Report, Appendix 2, summarise the comments raised as to why the Article 4 Direction is not necessary for the protection of local amenity, specifically residential amenity. These comments were made in the context of paragraph 53 of the NPPF which advises that Article 4 Directions should "be limited to situations where...necessary to protect local amenity or the wellbeing of the area".
- 5.19 Residential properties are scattered around the perimeter of the Article 4 Direction boundary, with a number of properties within 50m of excavations. The MPA has been contacted on numerous occasions with reports of activity taking place, predominantly at Overton Quarry, highlighting that working at this site is

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noticeable; for example, the MPA received reports of 16 days of working between 9 February 2021 and 8 March 2021 (inclusive) at Overton Quarry. These reports were first identifying activity, but later indicated the impacts of quarrying on local residents; for example, one phone call stated the working was causing them “significant harassment and nuisance”, affecting their “peace and tranquillity”. They also referred to working late at night and early in the morning, and on weekends. At present, there are no planning controls to protect residents from noise or dust emissions.

- 5.20 The North Devon Council Environmental Protection Team responded to the Article 4 Direction consultation stating “the proximity of existing properties to the Article 4 Direction boundary is such that mineral working within the boundary could significantly impact the living conditions of residential neighbours”, and the proposed removal of permitted development rights is supported.
- 5.21 North Devon Council has served an Abatement Notice in relation to dust at Overton Quarry. It is understood that this Notice requires the submission of a dust management plan, demonstrating that dust is an issue that requires control.
- 5.22 It is only by use of the Article 4 Direction, and through the requirement to seek planning permission, that the Council as MPA can have regard to the relevant policies relating to residential amenity within the Devon Minerals Plan.
- 5.23 Whilst it is appreciated that some excavation areas are not immediately adjacent to residential properties, there are other factors that justify the area’s protection.
- 5.24 Other sections of this report cover local amenity in terms of local environment.

Issue: The Article 4 Direction is not necessary for protecting biodiversity

- 5.25 Paragraphs 3.22 – 3.23 of the Consultation Outcomes Report, Appendix 2, summarise the comments raised as to why the Article 4 Direction is not necessary for protecting biodiversity. In a report accompanying Report CET/22/78, the DCC Ecologist stated the potential effects of allowing minerals working for agricultural purposes. This referred to direct and indirect impacts from the expansion of existing quarries or the opening of new quarries upon locally designated sites, as well as priority habitats and protected species.
- 5.26 The exclusion of existing extraction areas has been proposed by landowners. It is agreed that direct impacts upon habitats and species would be less likely should mineral working only continue on disturbed ground. However, all working could result in indirect impacts, for example noise, level changes, vehicle movements and dust could cause changes to water or air quality, impacting surrounding habitats and species. The expansion of existing areas would be inevitable once resources were exhausted, and then direct impacts would be seen. The inclusion of existing quarries within the Direction boundary also guards against incremental growth of those quarries that could harm adjacent habitats and allows for the consideration of biodiversity net gain and achieving enhancements through restoration, the benefits of which would be lost without the submission of a planning application.

Issue: If material has to be imported, it is unsustainable

- 5.27 It is acknowledged that, should material become unavailable through permitted development, landowners may have to import material from elsewhere, potentially from a further distance, should they not wish to apply for planning permission and/or it is not granted.
- 5.28 The stone used from the quarries on Codden Hill is typically an aggregate used for hardcore, and it has limited special properties for building purposes. There is ample availability of crushed rock in North Devon from permitted land-won sources, as well as recycled aggregates available. These sites have been through the planning process to ensure impacts upon the environment are acceptable.
- 5.29 The benefits of utilising material close to the source of extraction would be a consideration in any planning application for extraction. However, the advantage of sourcing material from a shorter distance must be balanced against the need to protect the amenity of local residents and environment from the impacts of mineral working. The Article 4 Direction is therefore justified as a means of enabling this balancing to be undertaken through a planning application. Given this, it is not considered necessary to amend the Article 4 Direction.

Issue: The Article 4 Direction boundary requires amendment

- 5.30 In making an Article 4 Direction, the Council must have regard to paragraph 53 of the NPPF which states that “the use of Article 4 directions to remove permitted development rights should...in all cases, be based on robust evidence, and apply to the smallest geographical area possible”.
- 5.31 The Article 4 Direction boundary is based on the extent of existing quarrying known in the area together with consideration of the clearly defined landscape feature of Codden Hill where any further quarrying would be likely to cause harm to the landscape and local amenity, as outlined in the evidence presented with Report CET/22/78.
- 5.32 One response highlighted that the previous report did not consider a smaller boundary but, for the reasons above, the area included within the Direction was already limited to the smallest geographical area considered necessary to prevent harm in line with the requirements of paragraph 53 of the NPPF.
- 5.33 However, three landowners consider quarries on their land should not form part of the Article 4 Direction. These include Codden Hill Quarry; Overton Quarry; Horswell Quarry; and the quarry located north of Hearson Cross. The inclusion of each quarry within the Article 4 boundary will be considered in turn.
- 5.34 **Codden Hill Quarry:** The face of this quarry is approximately 50m away from residential properties, meaning harm to local amenity, including from noise and dust emissions, is likely should operations not be adequately controlled. The site is visible from the A377 (when travelling southbound) and forms part of the distinct landscape feature of Codden Hill. As Codden Hill steeply rises above

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the properties, the quarry face is cut into the hillside, and further mineral extraction could increase this visual impact. The site is surrounded by a County Wildlife Site designated predominately due to the existence of lowland heath, a priority habitat that is sensitive to atmospheric pollution.

- 5.35 **Overton Quarry:** It is accepted that Overton Quarry is long established in the landscape; however, as extraction has increased, so has its visibility. Operations have previously altered the extent of quarrying, and permitted development rights do not prevent a quarry from extending further towards the skyline, or altering the current landform within the existing extraction area. In any case, the consideration of landscape extends beyond visual impacts, to impacts upon peace and tranquillity, as discussed in paragraph 5.17 of this report. This site is also in close proximity to residential properties, and the presence of an Abatement Notice for dust highlights the impacts from quarrying.
- 5.36 **Horswell Quarry:** As with Overton Quarry, it is accepted that Horswell Quarry is long established in the landscape, albeit it has grown in scale, but the impacts of extraction on the landscape extend beyond visibility. This site also has the potential to impact upon the setting and significance of Codden Beacon Scheduled Monument, as detailed in Report CET/22/78, which is a prominent feature in the landscape.
- 5.37 **Hearson Cross Quarry:** It is agreed that this quarry is more visually screened than other existing extraction areas on Codden Hill, with the closest residential property approximately 180m to the southwest of the site. From aerial imagery, it appears the extent of the quarry has grown over the past four years, removing vegetation. Further expansion will result to the loss of further mature trees, which could alter the landscape character of the area, with the peace and tranquillity also being affected by quarrying. Hearson Hill County Wildlife Site is also to the east (with the road separating the site and CWS), designated for its interesting mix of upland, lowland and wet woodland communities. There is also some woodland considered ancient within this area. The value of the woodland habitat surrounding the extraction area is unknown and could be of value given the neighbouring woodland. As highlighted in 5.26, there could also be indirect air quality or hydrological impacts.
- 5.38 It is considered that, even if working takes place within the existing quarries' boundaries, when considering the impacts as a whole across Codden Hill there is still the potential to cause harm to the local amenity and landscape. On this basis, it is considered that the boundary is based on robust evidence and applies to the smallest geographical area possible, in accordance with paragraph 53 of the NPPF, and does not require amendment.

6) Strategic Plan

- 6.1 Due to the nature of this proposal, it is not considered relevant to the Council's Plan 2021-2025.

7) Financial Considerations

- 7.1 In certain circumstances, compensation may be payable by the Council. Section 108 of The Town and Country Planning Act 1990 contains compensation arrangements and is applicable to a situation where permitted development rights are removed. Section 108(3C)(c) states that at least 12 months' notice of the withdrawal is required to avoid the ability for compensation claims to be made and, therefore, a non-immediate Article 4 Direction has removed this risk.
- 7.2 One response asserted that the financial implications for the landowners had not been considered. Confirming the Article 4 Direction would result in the need for landowners to apply for planning permission after the date on which the Article 4 takes effect (i.e. 12 months after the notice is first published of the intended direction) if they wish to undertake mineral extraction. This would require the landowner to prepare the documentation considered necessary to accompany planning applications, and the relevant fee to be paid to the MPA on submission of the application. The administrative cost of processing these applications for the Council will be met from existing revenue budgets. Depending on the nature of the application, monitoring may also be undertaken and charged for by the MPA, and conditions may need to be reviewed every 15 years. Should planning permission be refused, landowners may have to import material from other sources.
- 7.3 Whilst additional expense would be placed on the landowners, it is considered that the financial implications of the proposed recommendation are proportionate to the potential harm that may be caused under the permitted development rights.

8) Legal Considerations

- 8.1 The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) grants planning permission to a number of specified forms of development. The forms of development for which permission is granted are set out in Schedule 2 of the GPDO. Article 4 of the GPDO allows the local planning authority to make a direction that removes specified permitted development rights within a defined area if those rights would be prejudicial to proper planning of their area or constitute a threat to the amenities of the area. Schedule 3 of the GPDO describes the process by which these Article 4 directions are made. Paragraph 1 of Schedule 3 deals with non-immediate directions.
- 8.2 Schedule 3 of the GPDO advises that an Article 4 Direction must take effect between 28 days and two years after it is made. It must only be confirmed by the Council after the notification period has passed, having taken into account any representations received during the public consultation. The Council must notify the Secretary of State on the same day the notice is made. Appendix 2 and paragraphs 4.1, 4.2 and 4.5 of this report outline how the Council has followed the advertising and notification requirements required under Schedule 3 GPDO.

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- 8.3 In addition to following the correct procedure, the Council must provide sufficient evidence and justification to support the Article 4 Direction. A failure to do so, or incorrect procedure, may lead to a judicial review of the decision or intervention by the Secretary of State. The Article 4 direction may be modified, cancelled or quashed as a result.
- 8.4 It should be noted that one response considers there to be inadequate justification for the Article 4 Direction and it is, therefore, vulnerable to judicial review.
- 8.5 However, the Council considers sufficient evidence has been provided to make an informed decision, and that the Council has followed the process outlined in Schedule 3 of the GPDO.
- 8.6 Notice of confirmation of the Article 4 Direction must be published and served in accordance with the requirements of the GPDO.

9) Equality Considerations

- 9.1 In making its decision the Council must also have regard to its public sector equality duty (PSED) under s.149 of the Equalities Act. The duty is to have due regard to the need (in discharging its functions) to:
- a) eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
 - b) advance equality of opportunity between people who share a protected characteristic and those who do not; and
 - c) foster good relations between people who share a protected characteristic and those who do not.
- 9.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 9.3 The PSED must be considered as a relevant factor when considering its decision but does not impose a duty to achieve the outcomes in s.149. The level of consideration required (i.e. due regard) will vary with the decision including such factors as the importance of the decision and the severity of the impact on the Council's ability to meet its PSED, and the likelihood of discriminatory effect or that it could eliminate existing discrimination.
- 9.4 The Council should give greater consideration to decisions that have a disproportionately adverse impact on a protected characteristic and this impact may be unintentional. In appropriate cases, this may involve an understanding of the practical impact on individuals so affected by the decision. Regard should be had to the effect of mitigation taken to reduce any adverse impact.
- 9.5 Further, the PSED is only one factor that needs to be considered when making a decision and may be balanced against other relevant factors. The Council is also entitled to take into account other relevant factors in respect of the decision, including financial resources and policy considerations. In appropriate cases,

such countervailing factors may justify decisions which have an adverse impact on protected groups.

- 9.6 As set out in the previous report, CET/22/78, it is not considered the removal of permitted development rights will have any implications relating to equality issues or groups with protected characteristics. No person with protected characteristics has come to the attention of the Council during the consultation period, or since the publication of the previous report, CET/22/78. However, if it subsequently comes to the attention of the Council that a person with protected characteristics is affected, the appropriate adjustments can be made.

10) Risk Management Considerations

- 10.1 It is considered that the Article 4 Direction has been managed in accordance with statutory requirements and, therefore, there are limited legal and financial risks to the Council in its role as Mineral Planning Authority are likely to arise. However, as mentioned previously, one respondent considers the Article 4 Direction is vulnerable to judicial review.
- 10.2 The Secretary of State retains the option of intervening following the confirmation of the Article 4 Direction. Officers will continue to engage with the Department for Levelling Up, Housing and Communities to seek clarification on whether it is the Secretary of State's intention to intervene and, if necessary, will seek to provide any information that may be required.
- 10.3 No additional risks have been identified.

11) Reasons for Recommendation/Alternative Options Considered

- 11.1 The Committee has the option of confirming or not confirming the Article 4 Direction.
- 11.2 The Article 4 Direction can be confirmed by the Council in accordance with the recommendation in this report having taken into account all representations received during the public consultation. If confirmed, it will come into effect on 14 January 2024, and the Council must, as soon as practicable, notify the Secretary of State and publicise the Direction in the same way that the public consultation was carried out.
- 11.3 Should the Council decide not to confirm the Direction, all persons previously consulted will be notified of this decision and mineral extraction under Class C can continue without the need for a planning application.
- 11.4 Any amendment to the boundaries to decrease or increase the geographic scope of the areas covered by the Direction may result in delay in the Direction coming into effect, which would mean a period where Codden Hill is not protected, therefore it is recommended that the Direction be confirmed as originally made. Nonetheless, the Secretary of State also retains the option of intervening in the Direction.

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- 11.5 On 11 November 2020, the Council issued Enforcement Notices under s172 of the Town and Country Planning Act 1990 in respect of Horswell Quarry and Overton Quarry, both of which fall within the area covered by the Article 4 Direction. These notices required compliance by 26 April 2021 by ceasing extraction and export of minerals from the two quarries and to remove all plant and machinery associated with the same. These notices were not complied with which caused the Council to secure an interim injunction to prevent further extraction and mining of minerals at the two quarries. The injunction proceedings and associated appeal to the Planning Inspectorate of the Council's refusal to grant a Certificate of Lawfulness are ongoing.
- 11.6 Whilst the Enforcement Notices and interim injunction provide some control with respect to Horswell Quarry and Overton Quarry, the injunction proceedings and associated appeal to the Planning Inspectorate remain ongoing with final determinations yet to be made. In any event, those proceedings only pertain to Horswell Quarry and Overton Quarry and not the larger area under the Article 4 Direction.
- 11.7 Without the Article 4 Direction, there are no/inadequate controls other than the limitations within the GPDO to mitigate any of the impacts detailed in Report CET/22/78, and it is considered likely that mineral working for agricultural purposes will continue given the history of mineral development in the area. It is considered that the impacts upon the landscape, living conditions, biodiversity and the historic environment when taken as a whole would be unacceptable, without being subject to the planning application process, should permitted development rights be maintained and mineral working for agricultural purposes continue on Codden Hill. It is only by use of the Article 4 Direction, and through the requirement to seek planning permission, that the Council can have regard to the relevant policies within the Devon Minerals Plan and secure mitigation for the impacts of mineral working.
- 11.8 It is considered this report and Report CET/22/78 demonstrates that the Article 4 Direction as proposed is necessary to protect local amenity, and that permitted development rights pose a serious threat to a landscape of exceptional beauty, Codden Hill.
- 11.9 The objections that have been raised are not considered to warrant any changes to the Article 4 Direction; the existing excavation areas contribute, or have the potential to contribute, to harming local amenity and the landscape and should be included in the Direction area.
- 11.10 In conclusion, it is considered that the Article 4 Direction, which is supported by local residents, represents an appropriate balance between the rights of the landowners (to enjoy land subject to the reasonable and proportionate control by a public authority) and the interests of those affected by the matter and the wider public interest. On this basis, the Article 4 Direction should be confirmed.

Mike Deaton
Chief Planner

Electoral Division: Chulmleigh & Landkey

Local Government Act 1972: List of background papers

Background Paper Casework File Nil

Contact for enquiries:

Name: Emily Harper

Telephone: 01392 383000

Address: Room 120, County Hall, Exeter

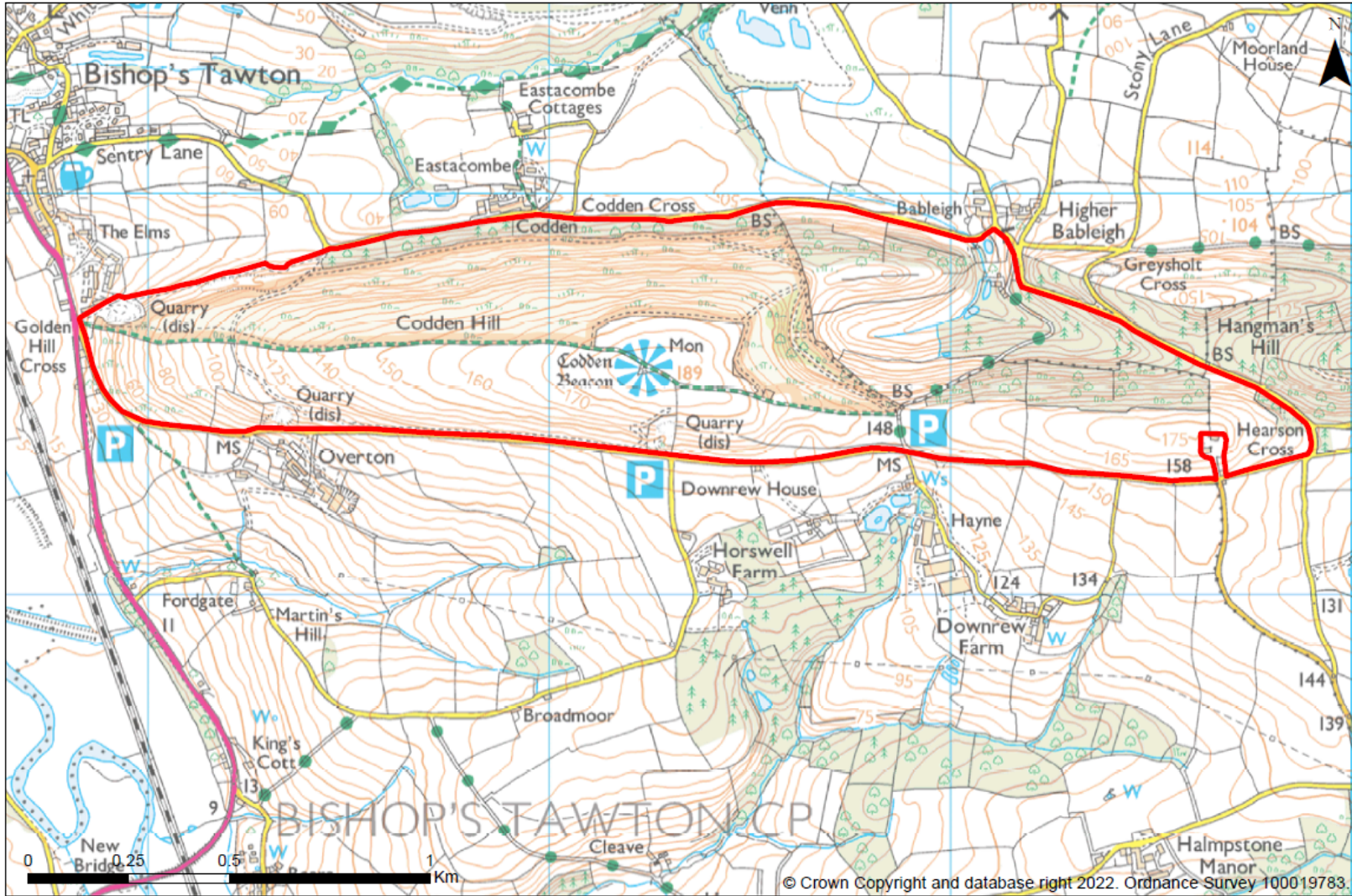
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sc/cr/Article 4 Direction Codden Hill Bishop's Tawton Barnstaple

03 271123

Appendix 1 to CET/23/105 – Article 4 Direction Boundary

Land at Codden Hill - Proposed Article 4 Direction Boundary



Appendix 2 to CET/23/105 – Consultation Outcomes Report

Codden Hill Article 4 Direction Consultation Outcomes Report

November 2023



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1. Introduction

- 1.1. Devon County Council is the Mineral Planning Authority [MPA] for Devon, excluding Plymouth, Torbay, Dartmoor National Park and Exmoor National Park. The Council is responsible for producing the Devon Minerals Plan and also determining planning applications for mineral development, ensuring development complies with planning policy and minimises impacts upon the local community and environment.
- 1.2. Class C of Part 6 within Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) [GPDO] allows for mineral working for agricultural purposes to take place without the need for a planning application, providing it meets the conditions and limitations of the Order. Devon County Council considered the need for an Article 4 Direction to control this type of development at the Development Management Committee on 7 December 2022 given the existing and potential harm that further mineral working may cause to the local environment and amenity of the area. The Committee agreed to make an Article 4 Direction which would remove these permitted development rights and require a planning application for mineral working for agricultural purposes [*minute 36*].
- 1.3. A consultation was held from 13 January 2023 – 10 February 2023 for representations on the Article 4 Direction to be made to the Mineral Planning Authority in accordance with paragraph 1(4)(d) of Schedule 3 Procedures for Article 4 Directions of the GPDO. A Consultation Statement was published in January 2023 setting out how the consultation would be carried out. The Statement can be viewed here: <https://www.devon.gov.uk/planning/article4/>
- 1.4. This report sets out how the Council met the requirements of Schedule 3 Procedures for Article 4 Directions of the GPDO and summarises the responses received by the Mineral Planning Authority during the consultation period, identifying the main issues for further consideration.

2. Consultation Summary

- 2.1. The Article 4 Direction was advertised in accordance with the statutory requirements as set out under Schedule 3, Procedures for Article 4 Directions of the GPDO. Devon County Council's Consultation Statement set out how the Article 4 Direction consultation would meet these requirements, including how the consultation would take place, and who would be consulted.
- 2.2. Paragraph 1(1) of Schedule 3 of the GPDO states that "*notice of any direction made under article 4(1) of this Order must, as soon as practicable after the direction has been made, be given by the local planning authority—*
- (a) by local advertisement;*
 - (b) by site display at no fewer than 2 locations within the area to which the direction relates, or, if the direction is made under article [4\(1\)\(b\)](#), on the site of the particular development to which the direction relates, for a period of not less than 6 weeks; and*
 - (c) subject to sub-paragraph [\(2\)](#), by serving the notice on the owner and occupier of every part of the land within the area or site to which the direction relates.*
- 2.3. Paragraph 2 continues "*the local planning authority need not serve notice on an owner or occupier in accordance with sub-paragraph (1)(c), if they consider that—*
- (a) individual service on that owner or occupier is impracticable because it is difficult to identify or locate that person or*
 - (b) the number of owners or occupiers within the area to which the direction relates makes individual service impracticable".*

The Notice

- 2.4. Paragraph (4) states that "*the notice referred to in sub-paragraph (1) must—*
- (a) include a description of the development and the area to which the direction relates, or the site to which it relates, as the case may be, and a statement of the effect of the direction;*
 - (b) specify that the direction is made under article 4(1) of this Order;*
 - (c) name a place where a copy of the direction, and a copy of a map defining the area to which it relates, or the site to which it relates, as the case may be, may be seen at all reasonable hours;*

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(d) *specify a period of at least 21 days, stating the date on which that period begins, within which any representations concerning the direction may be made to the local planning authority; and*

(e) *specify the date on which it is proposed that the direction will come into force, which must be at least 28 days but no longer than 2 years after the date referred to in paragraph (d)*

2.5. The notice given by the Mineral Planning Authority in accordance with paragraph 4 can be found in Appendix A. The notice specified a 28-day period for representations.

Consultation

2.6. In summary, notice was given by the MPA as soon as reasonably practicable after the direction being made on 7 December 2022² by way of:

- an advertisement in the local newspaper on 19 January 2023;
- site notices displayed at eight locations on 13 January 2023; and
- serving notice on the owner and occupier of every part of land, unless impractical, within the area to which the direction relates via recorded delivery on 13 January 2023.

2.7. In addition, a dedicated webpage was created, and local residents and other stakeholders were notified of the direction.

Local Advertisement

2.8. A local advertisement was published in the Western Morning News on 19 January 2023. A copy of this advertisement can be found in Appendix B.

Site displays

2.9. Site notices were displayed in 8 locations on Codden Hill on 13 January 2023. These locations were considered to reflect known existing mineral working areas and areas of public access and are shown in Appendix C.

2.10. Paragraph 1(5) of Schedule 3 of the GPDO states:

Where a notice given by site display is, without any fault or intention of the local planning authority, removed, obscured or defaced before the period referred to in sub-paragraph (4)(d) [21 days] has elapsed, the authority is treated as having complied with the requirements of that

² The Mineral Planning Authority considered a consultation over the Christmas period would not allow for any questions or contact by interested persons.

paragraph if they have taken reasonable steps for the protection of the notice, including, if need be, its replacement.

- 2.11. Given this, on 3 February 2023, an Officer checked the site notices and found 3 were missing (at locations 2, 5, & 7 as shown in Appendix C); these were replaced, with one further notice being reattached (at location 4 as shown in Appendix C). The remaining notices were found to be intact.

Digital publicity

- 2.12. A dedicated webpage was created:
<https://www.devon.gov.uk/planning/article4/>

Written notice

Owners and occupiers

- 2.13. 15 notices were sent by recorded delivery on 13 January 2023 to the known owners and occupiers of land within the Article 4 Direction boundary. These notices included information on an Article 4 Direction. An example notification letter and notice can be found in Appendix D. Where previous correspondence was had with landowners or their agents, a courtesy email was sent with the information.

Neighbouring properties

- 2.14. 45 properties close to the Article 4 Direction boundary were notified of the proposal by letter sent on 13 January 2023.

Other stakeholders

- 2.15. Notifications were also sent by email on 13 January 2023 to:

- Bishop's Tawton Parish Council;
- Landkey Parish Council;
- Swimbridge Parish Council;
- Devon County Council Local Member;
- North Devon Council Local Members;
- Historic England;
- North Devon Environmental Protection;
- DCC Landscape;
- DCC Ecology;
- Natural England; and
- Environment Agency

- 2.16. An example notification sent to neighbours and stakeholders is contained within Appendix E.

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Other notifications

- 2.17. In accordance with paragraph 1(6) of the GPDO, the Secretary of State was notified on 13 January 2023. See Appendix F.
- 2.18. In accordance with paragraph 1(8) of the GPDO, North Devon Council, the district planning authority, was notified on 13 January 2023.

3. Summary of Responses

- 3.1. As a result of the consultation, 23 written responses were received from landowners, local residents and some of the other stakeholders listed in paragraph 2.15. Full copies of the responses can be found here: <https://www.devon.gov.uk/planning/article4/>
- 3.2. Out of the 23 responses received, 16 state that they **support** the Article 4 Direction. The majority (14) of this support is from local residents, who highlight impacts that have already taken place from previous mineral extraction at Codden Hill and, therefore, state concerns should uncontrolled mineral working continue. The common themes raised when supporting the Article 4 Direction include:
- Impacts on living conditions and residential amenity:
 - Noise - Previous mineral extraction generated traffic, sometimes all day, with machinery working as early as 6am and as late as 10pm; Working took place at the weekends and on bank holidays;
 - Dust – generation of dust, which is stated to contain silica;
 - Use of floodlights;
 - Implications on human health from the above;
 - Landscape – Highlight Codden Hill as a distinctive landmark and a place of beauty. Quarrying is said to be impacting upon this and disrupting the peace and tranquillity of the area.
 - Ecology – Destruction to habitats.
 - Water – Concerns that surface water runoff is contaminating drinking water; blocking drains; causing fields to become waterlogged; and may cause land stability issues.
 - Highways – Existing operations have damaged the road surface/verges. The road to the A377 is unsuitable for large vehicles – it is narrow, inadequate passing places and vehicles provide hazard to other road users, e.g. pedestrians, cyclists. Junction onto A377 is unsafe.
 - Recreation – Highlight the area as an important accessible green space, for walking and tourism.

Other responses question the need for the stone and state that house prices are negatively affected.

- 3.3. Whilst not stating their support, a further resident made comments regarding the issues raised above.
- 3.4. Of the stakeholders that responded, Landkey Parish Council stated their support for the Article 4 Direction, as did the North Devon Council Environmental Protection Team who note that “the proximity of existing properties to the Article 4 Direction boundary is such that mineral working within the boundary could significantly impact the living conditions of residential neighbours”.
- 3.5. The response continues to detail that North Devon Council investigated a complaint in December 2021 and issued an abatement notice in June 2022 in respect of the likely recurrence of statutory dust nuisance. They consider the findings of North Devon Council’s nuisance investigations and subsequent service of an abatement notice confirms that mineral working in this area can give rise to significant impacts on living conditions of residents in the vicinity. The response notes the removal of permitted development rights would create opportunities to control future potential impacts through the planning regime.
- 3.6. Natural England stated they had no comments to make. No other responses from other stakeholders were received.
- 3.7. The remaining five responses were from landowners affected by the Article 4 Direction. One stated that they had no objection and had disposed of the service reservoir, however, all other landowners objected or requested changes to the Article 4 Direction.
- 3.8. One landowner commented that there was a quarry missing on the plan³. The response identified this quarry as the extraction area north of Hearson Cross and stated that it has almost doubled in size over the last 24 months. The landowner expresses disappointment that the current decision is not to entirely stop any further extraction from all quarries⁴.
- 3.9. The three remaining landowners raise similar concerns; in short, they consider there to be insufficient justification for the inclusion of their quarries within the Article 4 Direction. These quarries are Codden Hill Quarry; Overton Quarry; Horswell Quarry; and the quarry north of Hearson Cross. The Mineral Planning Authority is aware that mineral extraction has taken place at these sites reportedly under Class C,

³ The MPA is aware of this quarry which is identified in Appendix II of Report CET/22/78.

⁴ An Article 4 Direction only results in the withdrawal of permitted development rights. It does not fully prohibit development.

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Part 6 in the past, however, the sites do not have extant planning permission⁵.

- 3.10. The landowner of Codden Hill Quarry stated that stone from this quarry has not been sold and has only been used on land that is within their ownership, and that the actions of one person should not be reflected on those who have used their quarries correctly⁶. The response continues that the quarry is small and has not grown hugely in size over the 100 years it has been in use. It has also been used for storage.
- 3.11. Questions are raised in relation how they would, and how long it would take to, get planning permission. An example was given of new gas and water pipes serving the village going through their land which may require stone to reinstate the land. It is stated that sometimes stone is needed as a matter of urgency and that planning permission cannot be gained quickly.
- 3.12. Another landowner also raises the issue of gaining planning permission. It is stated this is a time consuming and expensive process, with the financial burden on landowners not considered in Report CET/22/78. A lack of faith in getting planning permission is also raised given the landowner's previous requests to extract material using permitted development rights under the terms of the interim injunction being refused⁷. One response highlights that if it becomes impossible for the landowner to use stone, it will have to be imported using the road network to the farm, which is unsustainable.
- 3.13. One response implies that there are other measures that provide sufficient control to the Mineral Planning Authority. Report CET/22/78 stated that: "mineral working with no control can be intrusive and cause harm to living conditions of neighbouring residents". The response states that it is incorrect that there would be no control as the GPDO that grants permitted development rights limits their extent.
- 3.14. It continues that the current Enforcement Notices do not allow for working to take place at Overton Quarry and Horswell Quarry so there can be no uncontrolled working. Therefore, it is suggested that the claim previously made by the Council that "should permitted development rights remain, uncontrolled expansion could take place and new sites could appear" is clearly unfounded.

⁵ Note Codden Hill Quarry has a Dormant mineral permission (a mineral permission that was inactive from February 1982 to June 1995, as defined by the Environment Act 1995. However, it cannot be worked under this permission until a new scheme of working conditions has been submitted to and approved by the MPA.

⁶ The need for the Article 4 Direction has been assessed in terms of environmental harm and harm to amenity of neighbouring properties

⁷ These requests were made under the terms of the High Court Injunction Order of 26 May 2022, not as a planning application

- 3.15. Continuing with this issue, one response addresses the potential cumulative effects of operations, in that if they become significant in terms of landscape, then the works would fall within the scope of the Environmental Impact Assessment Regulations. Therefore, as limits and processes already exists for controlling damaging activity, the removal of permitted development rights is unnecessary.
- 3.16. Two of the landowners consider for their quarries, Overton Quarry, Horswell Quarry, and the quarry north of Hearson Cross, there is no landscape justification for them to be included in the Article 4 Direction.
- 3.17. The responses highlight that Article 4 Directions should cover the smallest geographical area possible and that the removal agricultural permitted development rights needs to demonstrate that those permitted development rights pose a serious threat to areas or landscapes of exceptional beauty.
- 3.18. It is argued that the quarries are long established features in the landscape, originating in the 18th or 19th century. The response also highlights that one landowner maintains, and facilitates the use of, land for public access surrounding Overton Quarry and Horswell Quarry; to spoil enjoyment of this tranquil landscape would be contradictory.
- 3.19. It is implied that concerns from the DCC Landscape Officer appear to relate to the expansion of existing sites and new sites, however, the use of the quarries for permitted development purposes is unlikely lead to any significant change to the extent of quarrying; there is an Enforcement Notice restricting working at Overton Quarry and Horswell Quarry; the figures of extraction quoted in the report (CET/22/78) pre-date the issue of the Notice so are not realistically going to be repeated; the number of prior approval applications where the landowner could realistically use the stone is in single figures in the last 5 years; and the MPA has argued that permitted development rights don't exist in other proceedings. The response, therefore, implies that if it is the expansion of the quarries is considered to challenge the integrity of the landscape, less draconian measures, could prevent the expansion of the quarries to any unacceptable degree without imposing a disproportionately high administrative and cost burden on the landowner.
- 3.20. One landowner considers that the area around the quarry north of Hearson Cross is low lying and not visible, with no public access.
- 3.21. Both responses conclude that the quarries should be removed from the boundary, and that the Article 4 Direction would still achieve the landscape protection desired if these areas were excluded.

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- 3.22. The responses consider that the ecological concerns outlined in Report CET/22/78 could also be addressed by redrawing the boundary of the Article 4 Direction, given the DCC Ecologist's concerns appear to only be surrounding the expansion of existing, or new, quarries, and the conclusion does not address whether a more restricted area being covered, i.e. removing existing working areas from the Article 4 Direction, would provide the necessary degree of protection for habitat and species.
- 3.23. One response states that the grassland surrounding the quarry north of Hearson Cross is normal, with imported grass seeds that are not native and, therefore, the reasons for the Article 4 Direction do not apply. In addition, it is stated that County Wildlife Sites are not protected by statute, and in any case, Overton and Horswell Quarries fall outside of the CWS designation. A response also considers that as the GPDO does not contain any restrictions for ecological reasons, it implies that the Government do not see the exercise of such rights as detrimental to biodiversity.
- 3.24. Article 4 Directions can also be used to protect local amenity. However, two landowners consider the potential impacts of their quarries on neighbouring amenity are minimal. The landowner of the quarry north of Hearson Cross considers that there are no houses in close proximity and the quarry is used very intermittently, causing little or no disturbance.
- 3.25. Infrequent working is also mentioned by another landowner. As well as previous extraction limitations mentioned in paragraphs 3.13 and 3.19, it is stated that material would only be removed if necessary for the purposes of agriculture on an associated agricultural unit. Such occasions will be limited. Extraction comes at a cost and will not be undertaken unless necessary.
- 3.26. It is suggested that this infrequent working would cause minor levels of noise or dust to neighbouring properties, that only two unsubstantiated complaints have been received by North Devon Council, with no formal action taken, and that there are no records of complaints to the Parish Council. The response references North Devon Council's letter accompanying Report CET/22/78; it is stated that whilst they considered uncontrolled mineral working would increase the risk of disturbance to local residents, they merely observe that allowing development to be controlled through the planning process would minimise the risk of disturbance. It is not advised that removal of PD rights is necessary to ensure reasonable safeguarding of the amenities of neighbours.
- 3.27. Again, an alternative control for this impact is highlighted. North Devon's Environmental Health Department is said to have the

necessary powers to deal with any nuisance that may arise; an Article 4 Direction is therefore not required or justified.

- 3.28. As indicated throughout the responses, the landowners consider amending the boundary would resolve their concerns but also ensure an adequate level of protection to the landscape, biodiversity and neighbouring residents. One response states the option of reducing the extent of the boundary to not include these quarries was not considered or given a balanced view in Report CET/22/78.
- 3.29. Overall, one response states that inadequate justification has been provided for the Article 4 Direction and is vulnerable to judicial review.

4. Secretary of State

- 4.1. The Department for Levelling Up, Housing & Communities wrote to the MPA on 9 March 2023 acknowledging the notification for the Article 4 Direction made on 13 January 2023. The letter stated the Article 4 Direction has been passed to the policy team for further assessment. They will consider whether the Direction fulfils national policy set out in Paragraph 53 of the National Planning Policy Framework on the use of Article 4 directions, and whether there is cause for the Secretary of State to use his powers of intervention under Schedule 3, Paragraph 1(13) of the 2015 Order. The letter stated that the MPA should not assume that the Article 4 Direction has met the policy tests until we are notified by the Department.
- 4.2. Further discussion with the Department has established that, even though the Article 4 Direction is under consideration, it does not prevent any of the processes associated with introducing the Article 4 direction from going forward, although it should be noted that the Secretary of State has the power to modify or cancel an Article 4 direction at any time.

5. Conclusions

- 5.1. Despite the concerns raised by landowners, the majority of responses show support for the Article 4 Direction for various reasons. Some of the reasons reflect the reasons put forward in Report CET/22/78. The other reasons highlight the impacts of mineral development but have not been put forward by the MPA as a reason for the Article 4 Direction given the scope and purpose of Article 4 Directions. The MPA considers that no reasons of support that have been put forward require an amendment to the Article 4 Direction.
- 5.2. The responses from landowners, however, raise common themes that require further attention:
 - the requirement for planning permission is expensive and time consuming, and applications could be refused;

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- the GPDO already includes controls; mineral extraction for permitted development has been and is limited; and in any case, other methods of controls exist;
 - the Article 4 Direction is not necessary for landscape protection;
 - the Article 4 Direction is not necessary for protecting local amenity;
 - the Article 4 Direction is not necessary for protecting biodiversity;
 - if material has to be imported, it is unsustainable; and
 - the Article 4 Direction boundary requires amendment.
- 5.3. It is recommended that these issues are examined further when Devon County Council considers whether to confirm the Article 4 Direction.

Appendix A – Notice

DEVON COUNTY COUNCIL

TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT)
(ENGLAND) ORDER 2015 (AS AMENDED)

NOTICE OF MAKING A DIRECTION WITHOUT IMMEDIATE EFFECT UNDER ARTICLE 4(1)

NOTICE IS GIVEN that Devon County Council made an Article 4(1) Direction ('the Direction') on 13 January 2023 under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the Order').

The Direction withdraws the permitted development rights granted by Class C - mineral working for agricultural purposes, of Part 6 Agricultural and forestry of Schedule 2 of the Order.

The Direction applies to land and properties within the area shown by the red line on the plan accompanying the Direction, known as Codden Hill.

The effect of the Direction is that, once it comes into force, the permitted development rights for this type of development are withdrawn within the area specified. Such development shall not be carried out within the area outlined in red on the plan accompanying the Direction unless planning permission is granted by Devon County Council pursuant to a planning application made to that Council under Part III of the Town and Country Planning Act 1990 (as amended).

The Direction was made by Devon County Council on 13 January 2023 and, subject to confirmation by Devon County Council, shall come into force on 14 January 2024. A copy of the Direction, including the accompanying plan defining the area covered, is available for inspection at County Hall, Topsham Road, Exeter, EX2 4QD

The Direction and plan can also be viewed on Devon County Council's website:
www.devon.gov.uk/planning/article4

Representations may be made concerning the Direction between 13 January 2023 and 10 February 2023. If you wish to make representations, you may do so by email to planning@devon.gov.uk or by post addressed to:

Planning - Article 4 Consultation
Devon County Council
Room 120
Topsham Road
Exeter
EX2 4QD

Any representations must be received by **10 February 2023**.

For enquiries or to request printed copies or an alternative format, please email planning@devon.gov.uk

Appendix B – Newspaper Advert

Thursday, January 19, 2023 **WESTERN MORNING NEWS**

Public Notices

Planning

**TOWN AND COUNTRY PLANNING
(GENERAL PERMITTED DEVELOPMENT) (ENGLAND)
ORDER 2015 (AS AMENDED)
NOTICE OF MAKING A DIRECTION WITHOUT IMMEDIATE EFFECT
UNDER ARTICLE 4(1)**

NOTICE IS GIVEN that Devon County Council made an Article 4(1) Direction ('the Direction') on 13 January 2023 under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the Order').

The Direction withdraws the permitted development rights granted by Class C - mineral working for agricultural purposes, of Part 6 Agricultural and forestry of Schedule 2 of the Order.

The Direction applies to land and properties within the area shown by the red line on the plan accompanying the Direction, known as Codden Hill.

The effect of the Direction is that, once it comes into force, the permitted development rights for this type of development are withdrawn within the area specified. Such development shall not be carried out within the area outlined in red on the plan accompanying the Direction unless planning permission is granted by Devon County Council pursuant to a planning application made to that Council under Part III of the Town and Country Planning Act 1990 (as amended).

The Direction was made by Devon County Council on 13 January 2023 and, subject to confirmation by Devon County Council, shall come into force on 14 January 2024.

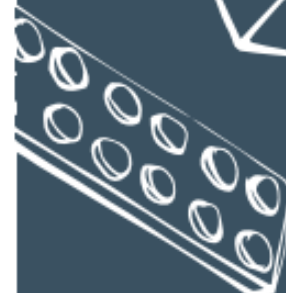
A copy of the Direction, including the accompanying plan defining the area covered, is available for inspection at County Hall, Topsham Road, Exeter, EX2 4QD

The Direction and plan can also be viewed on Devon County Council's website: www.devon.gov.uk/planning/article4

Representations may be made concerning the Direction between 13 January 2023 and 10 February 2023. If you wish to make representations, you may do so by email to planning@devon.gov.uk or by post addressed to Planning - Article 4 Consultation, Devon County Council, Room 120, Topsham Road, Exeter, EX2 4QD

Any representations must be received by **10 February 2023**.

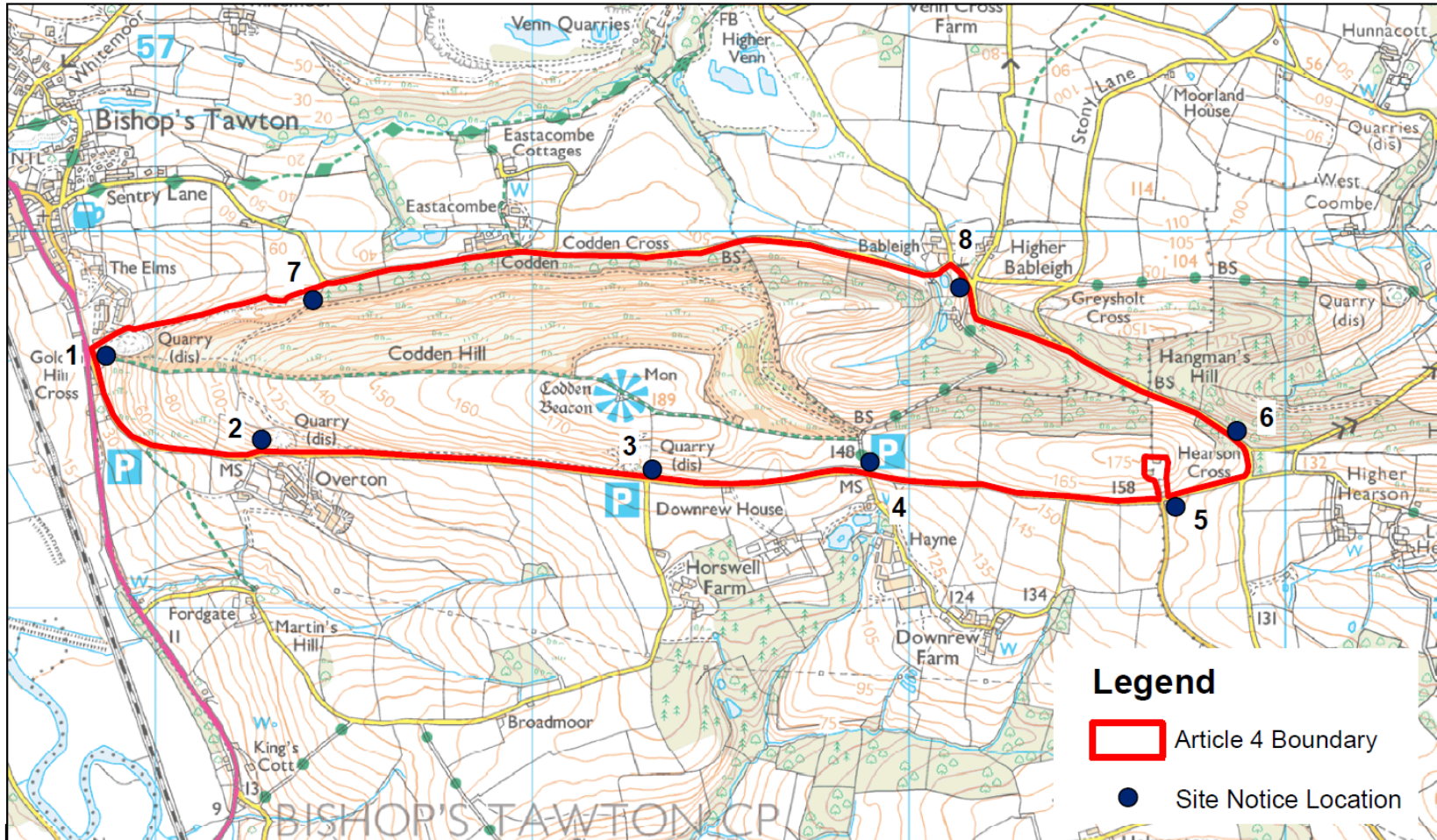
For enquiries or to request printed copies or an alternative format, please email planning@devon.gov.uk



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Appendix C – Location of site displays

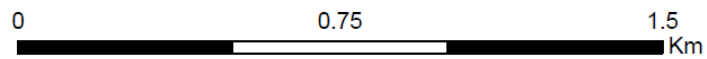


Legend

- Article 4 Boundary
- Site Notice Location

Site Notice Locations

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Ordnance Survey 100019783



Agenda Item 5

Appendix D – Example of notification sent to Landowners

**Climate Change, Environment and
Transport**
County Hall
Topsham Road
Exeter
EX2 4QD

Tel: 01392 383894
Email: Planning@devon.gov.uk

13 January 2023

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

Dear Sir/Madam,

Article 4 Direction under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for development consisting of mineral working for agricultural purposes (Class C, Part 6 of Schedule 2) at Codden Hill, Bishop's Tawton, Barnstaple, Devon.

On 7 December 2022, Devon County Council's Development Management Committee resolved to make a non-immediate Article 4 Direction to remove permitted development rights under Class C – mineral working for agricultural purposes of Part 6 – Agricultural and Forestry of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) at Codden Hill, Bishop's Tawton, Barnstaple.

The effect of the Direction would be that development set out by Class C – mineral working for agricultural purposes could not be undertaken without a planning application being submitted to Devon County Council for consideration and planning permission being granted.

The Article 4 Direction at Codden Hill is proposed to come into force on **14 January 2024**. This would need to be confirmed by the Development Management Committee after considering any representations received.

It is understood that you are either an owner or occupier of land subject to the proposed Article 4 direction and, therefore, please find enclosed a Notice of the Article 4 direction, including a plan showing the area affected.

If you have any comments on the above proposal, representations may be made to Devon County Council between 13 January 2023 and 10 February 2023.

Please email any comments to planning@devon.gov.uk or post to:

Planning – Article 4 Consultation
Devon County Council
Room 120
Topsham Road
Exeter
EX2 4QD

Anonymous representations will not be considered, so your name and address should be included on any representation made. Please note your response will be made publicly available (with personal details removed).

I have included some background information within this letter but, for further information on the proposal, please visit www.devon.gov.uk/planning/article4

Should you have any questions, please do not hesitate to contact me using the details above.

Yours faithfully,

Emily Harper

Emily Harper
Climate Change, Environment and Transport

Agenda Item 5

What are permitted development rights?

Permitted development rights allow certain types of development to commence without the need to submit a planning application. Permitted development rights are set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) [GPDO].

What is an Article 4 direction?

A planning authority has the power to remove specified permitted development rights within a defined area. This is known as an Article 4 direction. An Article 4 direction does not stop development, but requires a planning application to be submitted for the development.

Why protect Codden Hill?

Devon County Council considers that Codden Hill is a distinct feature of the North Devon landscape that is highly visible with protected features, such as Codden Beacon Scheduled Monument, located centrally on Codden Hill. It also has valuable habitats and offers recreational routes for the public to enjoy and we want to protect this.

There are also a number of residents in close proximity to Codden Hill, and at present, we have no control to mitigate the impacts of mineral extraction for these residents, including noise, dust, and highway movements.

We consider that mineral working for agricultural purposes in the area has already caused a degree of harm to the local environment and we want to ensure that we can manage any future mineral extraction by requiring a planning application to be submitted.

How could this effect you?

Should the Article 4 direction be confirmed on 14 January 2024 as proposed, planning applications will be required for any mineral working on Codden Hill. You will no longer be able to extract minerals for agricultural purposes without submitted a planning application to Devon County Council for consideration and planning permission being granted.

DEVON COUNTY COUNCIL

TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND)
ORDER 2015 (AS AMENDED)

NOTICE OF MAKING A DIRECTION WITHOUT IMMEDIATE EFFECT UNDER ARTICLE 4(1)

NOTICE IS GIVEN that Devon County Council made an Article 4(1) Direction ('the Direction') on 13 January 2023 under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the Order').

The Direction withdraws the permitted development rights granted by Class C - mineral working for agricultural purposes, of Part 6 Agricultural and forestry of Schedule 2 of the Order.

The Direction applies to land and properties within the area shown by the red line on the plan accompanying the Direction, known as Codden Hill.

The effect of the Direction is that, once it comes into force, the permitted development rights for this type of development are withdrawn within the area specified. Such development shall not be carried out within the area outlined in red on the plan accompanying the Direction unless planning permission is granted by Devon County Council pursuant to a planning application made to that Council under Part III of the Town and Country Planning Act 1990 (as amended).

The Direction was made by Devon County Council on 13 January 2023 and, subject to confirmation by Devon County Council, shall come into force on 14 January 2024. A copy of the Direction, including the accompanying plan defining the area covered, is available for inspection at County Hall, Topsham Road, Exeter, EX2 4QD

The Direction and plan can also be viewed on Devon County Council's website:
www.devon.gov.uk/planning/article4

Representations may be made concerning the Direction between 13 January 2023 and 10 February 2023. If you wish to make representations, you may do so by email to

planning@devon.gov.uk or by post addressed to:

Planning - Article 4 Consultation

Devon County Council

Room 120

Topsham Road

Exeter

EX2 4QD

Any representations must be received by **10 February 2023**.

For enquiries or to request printed copies or an alternative format, please email
planning@devon.gov.uk

Agenda Item 5

Appendix E – Example of notification sent to neighbours and stakeholders

Climate Change, Environment and
Transport
County Hall
Topsham Road
Exeter
EX2 4QD

Tel: 01392 383894

Email: Planning@devon.gov.uk

13 January 2023

Dear Sir/Madam,

Article 4 Direction under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for development consisting of mineral working for agricultural purposes (Class C, Part 6 of Schedule 2) at Codden Hill, Bishop's Tawton, Barnstaple, Devon.

Devon County Council is proposing to remove the permitted development rights that currently allow for mineral working for agricultural purposes to take place without the need to submit a planning application at Codden Hill.

We are consulting you because we believe you may have an interest in the above matter, and we would welcome your feedback.

What are permitted development rights?

Permitted development rights allow certain types of development to commence without the need to submit a planning application. Permitted development rights are set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) [GPDO].

What is an Article 4 direction?

A planning authority has the power to remove specified permitted development rights within a defined area. This is known as an Article 4 direction. An Article 4 direction does not stop development, but requires a planning application to be submitted for the development.

What are we proposing?

On 7 December 2022, Devon County Council's Development Management Committee resolved to pursue an Article 4 direction to remove the permitted development rights under Class C – mineral working for agricultural purposes of Part 6 – Agricultural and Forestry of Schedule 2 of the GPDO at Codden Hill, Bishop's Tawton, Barnstaple.

The effect of the direction would be that development set out by Class C (mineral working for agricultural purposes) could not be undertaken without a planning application being submitted to Devon County Council for consideration and planning permission being granted.

The Article 4 direction at Codden Hill is proposed to come into force on **14 January 2024**. This would need to be confirmed by the Development Management Committee after considering any representations received.

Why protect Codden Hill?

Devon County Council considers that Codden Hill is a distinct feature of the North Devon landscape that is highly visible with protected features, such as Codden Beacon Scheduled Monument, located centrally on Codden Hill. It also has valuable habitats and offers recreational routes for the public to enjoy and we want to protect this.

There are also a number of residents in close proximity to Codden Hill and, at present, we have no control to mitigate the impacts of mineral extraction for these residents, including noise, dust, and highway movements.

We consider that mineral working for agricultural purposes in the area has already caused a degree of harm to the local environment and we want to ensure that we can manage any future mineral extraction by requiring a planning application to be submitted.

How could this effect you?

Should the Article 4 direction be confirmed on 14 January 2024 as proposed, planning applications will be required for any mineral working on Codden Hill. If you are a resident near to Codden Hill or have an interest in Codden Hill, then you may be consulted on any future planning applications that are received by Devon County Council.

Have your say

If you have any comments on the above proposal, representations may be made to Devon County Council between 13 January 2023 and 10 February 2023.

Please email any comments to planning@devon.gov.uk or post to:
Planning – Article 4 Consultation
Devon County Council
Room 120
Topsham Road
Exeter
EX2 4QD

Please include your name and address on any representation made. Please note your response will be made publicly available (with personal details removed). Anonymous representations will not be considered.

For more information and background on the proposal, please visit www.devon.gov.uk/planning/article4

Should you have any questions, please do not hesitate to contact me using the details above.

Yours faithfully,

Agenda Item 5

Emily Harper

Emily Harper
Climate Change, Environment and Transport

Appendix F – Notification to the Secretary of State

From: Planning Development Management - Mailbox <planningdevelopmentmanagement-mailbox@devon.gov.uk>
Sent: 13 January 2023 15:14
To: PCU <PCU@levellingup.gov.uk>
Subject: Devon County Council - Copy of non-immediate Article 4 Direction at Codden Hill, Bishop's Tawton, Devon

Dear Planning Casework Unit,

On 7 December 2022, Devon County Council's Development Management Committee resolved to make a non-immediate Article 4 Direction to remove permitted development rights under Class C – mineral working for agricultural purposes of Part 6 – Agricultural and Forestry of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) at Codden Hill, Bishop's Tawton, Barnstaple, Devon.

In accordance with Article 4(6), please find a copy of the Direction and the Notice made under Article 4(1), including a copy of the map defining the area to which it relates. The Notice has been first displayed and published today. The Article 4 Direction at Codden Hill is proposed to come into force on **14 January 2024**. We are currently holding a period for representations.

Information on the Article 4 Direction can be found here: www.devon.gov.uk/planning/article4

Please let me know if I should direct this notification elsewhere, you require further information or if you have any questions.

Thanks
Emily

Emily Harper (*she/her*)
Principal Planning Officer
Climate Change, Environment and Transport
Devon County Council
Room 120, County Hall, Exeter, EX2 4QD

Tel. 01392 383000
Mobile: 07980 751528
Email: emily.harper@devon.gov.uk

Disclaimer: <http://www.devon.gov.uk/email.shtml>
Data Protection Privacy Notices: [Privacy Notice - Planning Applicants](#) and [Privacy Notice - Planning Representations](#)

Delegated Schedule – 6 December 2023 - Summary

District	Location	Application Number	Proposal	Electoral Division	Decision
Mid Devon District Council	Cullompton Community College, Exeter Road, Cullompton, Devon, EX15 1DX	DCC/4323/2022	Construction of new two storey teaching accommodation comprising twelve classrooms and support spaces with associated external works, to be undertaken in two phases	Cullompton & Bradninch	Conditional Approval
Torrige District Council	Deep Moor Waste & Recycling Facility, Road from Belle View Cross to High Bullen, High Bullen, EX38 7JA	DCC/4357/2023	Extension of an Existing Green Waste Composting Site	Torrington Rural	Conditional Approval
North Devon District Council	Portmore to Landkey Junction section of the A361 258271 132103	DCC/4359/2023	Full planning application for the construction of two landscape bunds along the south side of the Portmore to Landkey Junction section of the A361, as part of the A361 North Devon Link Road scheme, with associated drainage infrastructure and landscape planting	Chulmleigh & Landkey	Conditional Approval
North Devon District Council	Caen Community Primary School, Caen Street, Braunton, Devon, EX33 1AD	DCC/4361/2023	Replacement of a dormer window, to match the existing	Braunton Rural	Conditional Approval

District	Location	Application Number	Proposal	Electoral Division	Decision
North Devon District Council	Former rail line between Buttercombe and Foxhunters, West Down, Ilfracombe	DCC/4363/2023	Construction of 700 metres of 3.5 metres wide multi-use path	Combe Martin Rural	Conditional Approval
North Devon District Council	Land to the west of Landkey Roundabout, A361, Landkey	DCC/4364/2023	Construction of a foot/ cycle bridge over the A361, North Devon Link Road	Chulmleigh & Landkey	Conditional Approval
East Devon District Council	Former Millwater School, Honiton Bottom Road, Litleletown, Honiton, EX14 2ER	DCC/4367/2023	Prior Approval application for the demolition of a single storey building comprising brick and block construction and flat roof and restoration works.	Feniton & Honiton	Prior Approval Grante