

Matters, Issues & Questions:

Matter 1: Minerals – Silica Sand

Question 34 - 44

Silica sand

34. With respect to Policy M12 (Continuity of supply of silica sand), the MWJP at paragraph 5.66 says that the resource at Blubberhouses Quarry overlaps with internationally important nature conservation designations. Bearing this in mind and also the national importance of silica sand, should part 2) of the policy make reference to potential impacts on integrity and potential “Imperative Reasons of Overriding Public Interest” (IROPI) subject to securing compensatory measures that ensure the overall coherence of the Natura 2000 network in accordance with *The Conservation of Habitats and Species Regulations 2017*?

Although the current Blubberhouses Quarry (MJP15, page 40, SD18) submission site boundary as reflected by application NY/2011/0465/73 lies outside, but abuts, the North Pennine Moors SPA/SAC sites, it is recognised that the buffered resource proposed for safeguarding under Policy S01- *Safeguarding mineral resources* does overlap with parts of the North Pennine Moors SPA/SAC sites. The MJP15 site submitter (see pages 40-41 of the *Discounted Sites Summary Document* (SD18)) is aware of this issue and is seeking to address issues relating to the retention of the quarry for future extraction through the planning application NY/2011/0465/73. Given the text within Part 2) of Policy D07 (*Biodiversity and geodiversity*) it is not considered necessary to duplicate it in Policy M12 – *Continuity of supply of silica sand* as the Plan should be read as a whole.

However, it is considered that it would be prudent to expand the supporting text in paragraph 5.67 to make reference to the potential, in some circumstances, for a need to demonstrate imperative reasons of overriding public interest. A relevant modification will be included in the ‘Main Modifications’ document to reflect this.

35. NPPF paragraph 146 (3rd bullet) requires at least a 10 year stock of permitted reserves to support individual silica sand sites. Is the reference to a “10 year landbank” in paragraph 5.68 of the Plan consistent with national policy?

It is agreed that the references in Policy M12 - *Continuity of supply of silica sand* and paragraph 5.68 to ‘landbank’, should for consistency with national policy read ‘stock’ and two relevant modifications will be included within the ‘*Main Modifications*’ document to reflect this, without detriment to the meaning of the Policy or paragraph.

36. MWJP paragraph 5.64 states that further reserves of silica sand may need to be released for Burythorpe Quarry (foundry sand) during the Plan period. Given the national importance of silica sand in this area for foundry usage and its national scarcity, should Burythorpe Quarry be allocated in Policy M12? Was Burythorpe Quarry ever put forward for allocation?

As set out in the *Site Identification and Assessment Methodology and Scope (SD15)* a call for sites for potential minerals extraction was issued within the *First Consultation Leaflet, April 2013 (FPC01)* and this call included all existing operators, including those of Burythorpe Quarry. No site submission regarding the quarry was submitted at that stage and none has been received since in respect of the various consultations on the Plan or separately. The *North Yorkshire County Council minerals specific paper (MEB04)* refers to the existing site as having planning permission until 2042 and it is understood from the operator (LPA47) that the current reserves are considered to be sufficient until beyond the end of the Plan period (2030). Notwithstanding this, Part 1) of Policy M12 (*Continuity of supply of silica sand*) provides support in principle for further proposals at Burythorpe that are necessary to maintain reserves during the period to the end of 2030. Although not mentioned in text relating to silica sand, there is now the requirement under the provisions of *The Town and Country Planning (Local Planning) (England) (Amendment) Regulations 2017 SI No. 1244 (LPA/17)* for local Planning authorities to review a local Plan every 5 years starting from the date of adoption. This would apply to the Plan once adopted and hence would provide an opportunity to assess the latest position with regard to silica sand extraction at this site should a significant change in circumstances arise.

37. With respect to the omission site at Blubberhouses Quarry (MJP15), should it be allocated in Policy M12, given the national importance of silica sand in the area for glass manufacture and its national scarcity?

The reasons for discounting the site are set out on page 40 of the *Discounted Sites Summary Document, October 2016 (SD18)*; however the national importance of silica sand and its national scarcity is acknowledged in the *North Yorkshire County Council minerals specific paper (MEB04)* which included a review of silica sand cross-boundary supply issues. Since that paper was produced, an application has been submitted in Cheshire by Sibelco UK Ltd for the extraction of around 3.3 million tonnes of silica sand but that application has to be determined. This application is scheduled to be determined by Cheshire East Council at its Committee meeting on 28th February 2018.

The NPPF itself did not include a definition of what was meant by a 10 year 'stock', however the PPG addresses the issue in the context of silica sand sites. In particular that stocks "*should be calculated when a planning application is submitted*" (for a site extension of a new site, or when new capital investment is proposed) and "*should be directly linked to the scale of capital investment*" for the required facility (PPG paragraph: 088 Reference ID: 27-088-20140306. Paragraph 090 states "*the required stock of permitted reserves for each silica sand site should be based on the average of the previous 10 years sales*". Reference ID: 27-090-20140306.

The site has been mothballed for more than 20 years so there is no means of identifying previous 10 years sales in order to calculate the potential stock of reserves in line with the PPG approach. Indeed, the nature of the market in the local area has changed since the site was last worked as the Saint Gobain plate glass development at Eggborough (a major user of high quality silica sand) post-dates the quarry mothballing by more than 10 years. Saint Gobain Glass UK has been consulted on all stages of preparation of the Plan and no representations have been received at any point in the preparation to indicate that the Blubberhouses Quarry or MJP15 is considered by this firm, as a major glass manufacturer local to the area, to be potentially important to glass manufacture or the future of the glass firm's operation. No indication has been received from the submitter of MJP15 to suggest that there is an imminent need for the silica sand at Blubberhouses, rather it appears to be viewed as a long-term strategic resource and that position is supported in principle in Policy *M12 Continuity of supply of silica sand*. As indicated in the *Discounted Sites Summary* document SD18 a planning application NY/2011/0465/73 to extend the period of time for working the site until 2036 is under consideration and it is considered that this provides the opportunity to resolve the future of the quarry for the period of the Plan. It is expected that, subject to the conclusion of the assessment of the impacts on the integrity of the internationally important nature conservation designations, a decision will be made on the application within the Plan period.

38. Are the reasons for discounting Blubberhouses Quarry set out in the *Discounted sites summary document*, October 2016 (SD18) justified?

Yes. As noted in the *Discounted Sites Summary Document* (SD18), the Blubberhouses site is significantly constrained by the presence of important environmental designations including, in particular, its location within the Nidderdale AONB and the immediate proximity of an internationally important nature conservation site.

National planning policy establishes a presumption against major development, such as this, in AONBs and these forms of development should only be permitted in exceptional circumstances and where they would be in the public interest. In order to establish whether this particular development would satisfy the '*major development test*' a range of matters require consideration at a detailed level. NPPF Paragraph 116 indicates that consideration of such applications should include an assessment of the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, on the local economy, the cost of and scope for developing elsewhere or meeting the need in some other way and any detrimental effect on the environment, the landscape and recreational opportunities and the extent to which that could be moderated.

Whilst this policy applies to the determination of planning applications, the Authorities consider that the existence of this very high policy threshold of acceptability means that a correspondingly cautious approach should be followed when considering the justification for allocating a site for major development in the AONB. In this particular case there are a number of significant uncertainties surrounding the proposed development of the site, including in relation to the need for the development (bearing in mind that, notwithstanding the existence of permitted reserves, there has been no production from the site for in excess of 20 years and no indication from the promoter of the allocation of an early intention to recommence production), uncertainty about the detail of proposed processing arrangements and how this might impact on matters relevant to the site's location within the AONB or on the adjacent internationally protected nature conservation designation and no detailed designs for the relocation of North Moor Road and any consequential implications from this.

Although the Authorities acknowledge that these and other relevant matters may be capable of resolution, there is still a degree of uncertainty as to whether the development of the site is likely to be acceptable. The Authorities therefore do not consider that there is sufficient justification at this time for allocation of the site. As noted in SD18, Policy M12 – *Continuity of supply of silica sand* of the Plan provides support for the principle of development of the silica sand resource at Blubberhouses Quarry subject to caveats regarding the outcome of a major development test and an Appropriate Assessment under the Habitats Regulations. A planning application for the development is currently awaiting

determination and, given that this determination will address the issues of the major development test and an Appropriate Assessment, it is considered that this provides the most appropriate mechanism for resolving these issues.

39. The *Discounted sites summary document* indicates that it is not sufficiently clear through a strategic level assessment whether site MJP15 could be developed and whether policy protection of the Nidderdale AONB and North Pennine Moors Special Protection Area (SPA) and Special Area of Conservation (SAC) could be achieved. However, I note from this document that a planning application has been submitted for the site, which presumably included more detailed information. Please confirm the current position and whether more detailed information is available to inform the allocation process.

The planning application (ref. no. NY/2011/0465/73) to extend the period of time for working the site until 2036 is still under consideration following a re-consultation in 2016, but there is currently no date for a report to Committee or for determination. The application was submitted with a Planning Statement (LPA/48) and an Environmental Statement (comprising 14 parts including a range of topics including landscape & visual assessment, ecology, soils, noise, cultural heritage) and additional information was submitted by the applicant in 2012 (LPA/49), 2013 (LPA/50), 2015 (LPA/51) and 2016 (LPA/52), full details of which can be viewed on the Council's online planning register Blubberhouses NY/2011/0465/73. However, no details of the proposed plant have been provided in the application or subsequent submissions and the applicant has indicated in the application statement section 2.4 of LPA/48 that '*design detail would be provided to the MPA for approval prior to installation of any new plant, buildings and machinery in line with the conditions of the existing planning permission*' (LPA/53). There are also no detailed designs for the relocation of North Moor Road. There are outstanding objections regarding the application from RSPB (LPA/54) and the Yorkshire Wildlife Trust (LPA/55) regarding the impact on nationally and internationally designated sites. The current position of the Highway Authority is LPA/56 and the final position is still awaited pending resolution of the interaction between the quarry and the A59 realignment proposals referred to in the response to Q42 below. Natural England's most recent consultation response in July 2015 (LPA/57) currently raises no objections but notes that the response does not include assessment of the Council's Habitats Regulation Assessment (HRA) as that did not form part of the consultation information in 2015. (Note: the HRA in connection with the application has still to be completed).

40. If the site were to be allocated, could this conflict with *The Conservation of Habitats and Species Regulations 2017* Part 6 (*Assessment of plans and projects*)? What information is available on whether the site is likely to have a significant effect on the North Pennine Moors SPA or SAC? Has an Appropriate Assessment been carried out on the site and, if so, with what results? Could any impact on the integrity of the SPA or SAC be justified by IROPI and the securing of compensatory measures that ensure the overall coherence of the Natura 2000 network?

The high level assessment for the Plan, as noted in Q. 39, indicates that it is not sufficiently clear whether the site could be developed in accordance with the *Conservation of Habitats and Species Regulations 2017* (LPA07).

Some information and opinion is available on whether the site is likely to have a significant effect on the North Pennine Moors SPA or SAC in the application and consultation responses thereon to the current Blubberhouses Quarry planning application which can be viewed on the Council's online planning register Blubberhouses (ref. no. NY/2011/0465/73).

An Appropriate Assessment for the site has not been fully completed for Plan purposes or the planning application because of the uncertainty over the timescale between the current time and the potential date for the commencement of extraction (which at present is unknown). The regulations require the Appropriate Assessment to be timely to the point of the assessment. Furthermore, the existence of proposals to re-route the A59, although in draft only, will need to be factored into the Appropriate Assessment. It is understood that ground investigation work used to inform the preferred route options for the realigned A59 is accompanied by further work to understand the extent and impact of the route options on the numerous environmental protections in place in the area. The option selected will be based on the ground investigations results and also on surrounding environmental assets and will seek to, minimise and mitigate any impact on those sites.

Whilst IROPI may be relevant given the national significance of the mineral, such factors are considered under the Habitats Regulations following the outcome of the appropriate assessment and the consideration of alternatives. The issue of compensation would also have to be addressed. However these issues can only be effectively addressed once the outcome of the appropriate assessment is known, pursuant to the planning application process and, as stated above, this is not yet the case. It is not considered that there is sufficient information to allow this site to proceed as an allocation.

41. Whilst great weight should be given to conserving landscape and scenic beauty in AONBs and *planning permission* for major development should only be granted in exceptional circumstances (NPPF paragraphs 115 and 116), silica sand resources are of national importance and great weight should be given to the benefits of mineral extraction (NPPF paragraph 144 1st bullet)? Taking account of the PPG (ID: 27-008-20140306) has the right balance been reached in not allocating Blubberhouses Quarry site?

PPG (ID: 27-008-20140306) refers to Mineral Planning Authorities planning for the steady and adequate supply of minerals and it is considered that, on the basis of the information available at present and notwithstanding the national scarcity of silica sand, it is currently not known whether the proposal is likely to be acceptable in planning terms given, including satisfying the major development test relating to major development in AONBs and so an allocation is not justified. It is not considered that the NPPF requirement to give great weight to the benefits of minerals extraction would necessarily outweigh the very strong policy presumption against major development in the AONB. This is a matter which requires detailed testing via the determination of a planning application.

Whilst NPPF Paragraph 144 may give great weight to the benefits of mineral extraction (which is an equal weighting given to conserving landscape and scenic beauty in National Parks and AONBs), this policy is generic rather than site specific and the Framework emphasises that National Parks and AONBs have the highest status of protection in relation to landscape and scenic beauty and irrespective of the perceived tension between these two paragraphs, NPPF Paragraph 116 raises the bar to the highest level in national policy by clearly stating that major development (which includes major minerals development) should be refused in these designated areas except in exceptional circumstances and where it can be demonstrated they are in the public interest. Paragraph 144 is further qualified (3rd bullet) by stating that in granting planning permission for mineral development there should be no unacceptable adverse impacts on the natural and historic environment. National policy is clear, therefore, that the need to give great weight to the economic benefits of mineral extraction should not override unacceptable environmental harm, particularly in areas which have statutory landscape protection.

42. I note that there is potential for the realignment of the A59 at Kex Gill to overlap with the Blubberhouses Quarry site. However, given that there is no definitive route for this road and no land has been safeguarded for its development, should this potential realignment influence the allocation of Blubberhouses quarry? What are the views of North Yorkshire County Council Highways Authority? Does Highways England have any remit for this and, if so, what are its views?

The A59 at Kex Gill has a history of landslips resulting in road closures, there is risk of personal injuries should a landslip occur and the alternative route for road users is deemed by the Highway Authority unsuitable for the volume and nature of vehicles. The Highway Authority consulted last autumn (2017) on options for re-aligning the A59 (www.northyorks.gov.uk/A59-kex-gill-re-alignment) and identified as the Highway Authority's favoured corridor a route that would cross between the Quarry plant site area and area of extraction. The ground investigation work, as referred to in Q.40, is nearing conclusion. The data collected through the ground investigation work will allow a final route option to be recommended. It is likely that the preferred route will be determined around Easter 2018, with approval by elected members in late Spring/early Summer. It is understood that the Department for Transport are supportive of this scheme in view of the key role that the A59 plays in east west connectivity. The Council's aim is that construction of the new road will begin in mid-late 2019 and be completed by the end of 2020 and so would potentially have an impact on MJP15's (Blubberhouses Quarry) development as the estimated commencement date, provided by the developer prior to Publication, was within the next 5-10 years.

In November 2014, the Highway Authority considered, as part of the site assessment process, that the access onto the A59 was acceptable and that a traffic assessment would be required but the site was not assessed as part of *Traffic Assessment of sites*, October 2015 (SD21) as the site was to be discounted. As at March 2016, the Highway Authority considered that due to issues with the A59 further discussions were required that might affect the outcome of the planning application (ref. no. NY/2011/0465/73).

Highways England was involved in the site assessment process but did not comment on MJP15 (Blubberhouses Quarry, page 40, SD18) as the A59 is a road maintained by the County Council. However, it has been consulted on the planning application (ref. no. NY/2011/0465/73) and, as at July 2015, had raised no objections.

43. Should Burythorpe Quarry and/or Blubberhouses Quarry be allocated to give certainty to when and where development may take place (PPAGE ID: 27-009-20140306)?

As stated in response to Q.36 the existing Burythorpe Quarry operation has planning permission until 2042, and the next review of the mineral permission is due in 2026, so does not require allocation and no additional land has been submitted for allocation through the plan process, therefore it is not considered practicable or necessary to identify any such area for allocation. With regard to Blubberhouses Quarry as explained in the response to Qs. 37, 38 and 41 above it is not considered that an allocation is justified.

44. In relying on criteria based policies rather than allocations, and taking account of development management policy D04: (Development affecting the North York Moors National Park and the AONBs), does the MWJP provide adequate opportunities to ensure there are reasonable prospects of producing sufficient supplies of silica sand to maintain adequate stocks of permitted reserves as per NPPF paragraph 146?

The criteria in Policy *M12 Continuity of supply of silica sand* are considered to provide appropriate flexibility, relevant to the particular circumstances for both Blubberhouses and Burythorpe Quarries, in order to support the supply of silica sand. The Blubberhouses site, in particular, is subject to major constraints which require resolution before it can be determined, via a planning application, whether it is acceptable for the site to play a role in future supply. This is considered to represent a balanced approach, reflecting the circumstances in the Plan area at this point in time.

Prepared by;

**North Yorkshire County Council
City of York Council
North York Moors National Park Authority**

Appendix

Matters, Issues & Questions:

Matter 1: Minerals – Silica Sand

Question 34 - 44

Main Modifications

The modifications below are expressed either in the conventional form of ~~strikethrough~~ for deletions and underlining for additions of text.

The page numbers and paragraph numbering below refer to the submission local plan, and do not take account of the deletion or addition of text.

Text in **red** refers to a proposed change to the Publication Draft MWJP, as detailed in the Addendum of Proposed Changes to the Publication Draft (2017).

Ref	Page	Policy/ Paragraph	Main Modification
Q34	68	5.67	<p>Revise Para:</p> <p>The proximity of designated internationally important nature conservation sites also means that Appropriate Assessment under the Habitats Regulations will be needed. <u>Where applicable to the location, any planning application for future development will need to consider appropriately the impacts on the integrity of the internationally important nature conservation designations in accordance with The Conservation of Habitats and Species Regulations 2017. This may include the need to demonstrate potential “Imperative Reasons of Overriding Public Interest” (IROPI) subject to securing compensatory measures that ensure the overall coherence of the Natura 2000 network. As a result on this ... forward in a planning application.</u></p>
Q35	67	M12	<p>Revise Part 1) of the Policy:</p> <p>1) Proposals for the continuing extraction of silica sand at Burythorpe ... a minimum 10 year</p>

Ref	Page	Policy/ Paragraph	Main Modification
			landbank stock for the site.
Q35	68	5.68	<p>Revise the Para:</p> <p>There are only three Mineral Planning Authority areas in England that produce silica sand suitable for high quality glass manufacture: Norfolk and Surrey County Councils and Cheshire East Council. Supply also takes place from Fife in Scotland. Supply from Cheshire East is due to cease in 2016 with no new supply sources available. Neither of Sites within the other two MPAs in England with reserves of silica sand currently has do not have a 10 year landbank stock as required by the NPPF national policy, although both are seeking to make future provision through their emerging land use plans which, if achieved, would enable supply to continue over a longer period should the market require. In both areas resources are constrained by a range of important environmental designations.</p>