

Examination

Hearing Session 1

PLAN PREPARATION, STRATEGY AND POLICY CONTENT

Tuesday, 20th April 2010 (Rhymney Room)

Miller Argent (South Wales) Limited

Representor No. 1844

STATEMENT



Issues & Matters Raised by the Inspector for Consideration at the Plan Preparation, Strategy and Policy Content Hearing on 25th May 2010.

1 Welcome and introductory remarks

2 Procedural Matters

- Have all the necessary procedural requirements been compiled with in preparing the Plan?

2.1 No Comment

3 Is the Plan development strategy consistent with the Wales Spatial Plan (WSP); regional plans/strategies; neighbouring authority plans/strategies; and national policy guidance?

- Does the strategy reflect the broad spatial response to development issues affecting the area as identified in the WSP?

3.1 No Comment

- Is the identified hierarchy, role and function of the main settlements consistent with the settlement hierarchy identified in the WSP?

3.2 No Comment

- Does (i) the identification of 5 settlements with principal town centre boundaries (policy SP19); (ii) the identification of Bargoed as a principal town (policy SP4); make the Plan unacceptably at variance with the WSP?

3.3 No Comment

- Is the Plan consistent with regional strategies, plans and programmes (eg: transport; minerals; waste)?

3.4 The Council's consideration of regional strategies for minerals is set out in their Background Paper 5, where Section 5 deals with aggregates and Section 6 deals with Energy Minerals. As Miller Argent is primarily interested in coal, we will concentrate on the latter.

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- 3.5 It is seen from Background Paper 5 that the Council relies heavily on the South Wales Regional Aggregates Working Party for the regional policy relating to aggregates. The working party consists of representatives from eighteen mineral planning authorities, the Quarry Products Association, British Aggregates Association, Environment Agency Wales, Countryside Council for Wales, Welsh Assembly Government, Office of the Deputy Prime Minister, Cuddy Demolition, Welsh Environment Trust and British Geological Survey. However, there is no comparable working party for coal or energy minerals referred to in the paper. The Council make reference to the Planning Officers Society for Wales which convenes the Minerals and Waste Topic Group and the Coalfield Officers Society. However, these are planning authority working parties with little or no input from industry bodies or representatives. In the absence of such a regional steering group for coal, the authority can only adhere to consultation with industry bodies and representatives as required by Minerals Planning Policy Wales (MPPW) and Minerals Technical Advice Note 2: Coal (MTAN2).
- 3.6 MPPW and MTAN2 acknowledge there can be difficulty in establishing the presence of economically and physically viable resources MTAN2 advises that primary and secondary coal resources, as identified by the British Geological Society, need only be shown on proposals maps for the purpose of safeguarding resources. Whilst this might suffice for the purpose of safeguarding coal resources to accord with MTAN2, it neither establishes the real requirements of the energy and coal industries nor does it enable the mineral planning authority to make a realistic contribution towards a continuous supply of coal for the region. Regrettably, prior to publishing their Deposit Draft LDP, the Authority made no enquiry with Miller Argent about the interest they had expressed in Nant Llesg as a candidate site; and although the presence of the Nant Llesg resource was well known, no information was called for to establish the extent, value, recoverability or likelihood of a proposal to develop the site. Information has therefore had to be voluntarily submitted by Miller Argent as part of their responses during the LDP process.
- 3.7 It is understood that the Authority has formally consulted the Coal Authority, but again only more latterly after strong representations were made by the Coal Authority, Miller Argent and other industry representatives. It is Miller Argent's view that the SEA consequently fails to recognise the national importance of this resource and does not acknowledge the medium to longer term positive effects that mineral coal working by opencast methods can bring to an area or the mitigation that can be offered at Nant Llesg by the remediation of derelict and dangerously unstable land that has resulted from extensive abandoned shallow mine workings and their spoil heaps.
- 3.8 Miller Argent is concerned by the Authority's approach to mineral working and, in particular, coal mining. The following comments in Background Paper 5 and the Authority's SEA raise concerns.
- 3.9 Background Paper 5 states:

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“There is, however, an area to the West of Rhymney that may offer potential for working. The coal authority has indicated that the ratio of coal to overburden is 20:1, which it considers may be economic in certain circumstances. The land is partly owned by a mining company (Miller Argent) who have expressed an interest in the site through the candidate site process. However there are local nature conservation and landscape designations within the resource area that would need to be considered. Also the latest WAG guidance (TAN 2 Further Consultation) suggests that local planning authorities can take account of cumulative impact of coal working on an area and that any negative impact on investment in the communities affected may also be taken into account. These factors are relevant to the area west of Rhymney because of the Heads of the Valleys Regeneration Programme and the long history of mining in the area. For those reasons no part of the area has been allocated in the plan.”

3.10 The ‘local nature conservation and landscape designations’ referred to are local authority proposed new designations that appear to Miller Argent to be aimed more at preventing the working of the Nant Llesg resource than protecting the interest they purport to reflect. Miller Argent’s written representation deals with the detail of its argument that the designations are unjustified and do not properly follow extant guidance.

3.11 The following statement also raises concern:

“Also the latest WAG guidance (TAN 2 Further Consultation [now MTAN2]) suggests that local planning authorities can take account of cumulative impact of coal working on an area and that any negative impact on investment in the communities affected may also be taken into account”.

3.12 The reference in MTAN2 refers to the **project-level assessment** of cumulative impact at the planning application stage and goes on to provide advice on the best practice for assessing cumulative impact **within** an Environmental Impact Assessment. As such a full environmental assessment of the project would be in hand to consider against the Sustainability Assessment of the LDP. This is the comprehensive approach advised at Appendix G of MTAN2. It is not for the Mineral Planning Authority to pre-empt this process by attempting to determine the matter at the LDP stage. Their decision not to allocate the area for possible mineral development appears to have been based on an extremely superficial and predetermined consideration of the likely environmental aspects of working the site. It is Miller Argent’s view that the identity of this valuable resource warranted a more balanced and thorough consideration of the environmental implications, including those of a positive and mitigating nature. We also question whether there is any evidence of opencast coal mining in the area having a “*negative impact on investment in the communities*”. It is Miller Argent’s experience that the economic benefits to the communities in the form of direct and indirect employment, business rates and the longer term benefits of land remediation and purpose-designed

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afteruse, far outweigh the usual negative impacts, which for the greater part, can be considerably mitigated by modern methodology and planning control.

- 3.13 Miller Argent believes the local authority's view and approach to coal extraction in their area since the closure of the deep mines can be simply summed up by...

"The coal has gone away – we don't want it back"

However, the Coal Industry Act 1994 provides for the continuation of coal mining in the UK by the private sector and the justification for the recovery of indigenous resources in favour of imports remains unchanged. The Nant Llesg resource is a National asset which has been long identified as a potential recoverable reserve, subject to being fully proven by a suitable programme of drilling. It is Miller Argent's intention to commence drilling operations shortly to complete that process and to then prepare a detailed proposal for mineral extraction and restoration that will address and remediate the land dereliction and instability in the area. That proposal will then be put before the mineral planning authority for consideration and it is therefore preferable for the LDP to recognise this eventuality and to provide for its allocation and proper consideration of such proposals when they come forward.

- 3.14 The "Council Approved" but not confirmed Caerphilly UDP was deficient in its minerals policy. The emerging LDP should not be permitted to similarly undermine the importance of minerals within the county borough and should make a positive contribution towards the continuous supply of coal and other minerals for the region.

- Does the Plan relate coherently to the emerging LDP strategies and policy approaches of neighbouring authorities?

- 3.15 Miller Argent's interest in this respect is limited to the cross-border nature of Cwmbargoed Disposal Point and its proposed allocation by both Merthyr Tydfil and Caerphilly Authorities as a Specific Mixed Use Employment Site related to rail-freight. The Authorities have entered into an agreement in this respect in the form of a Statement of Common Ground and Miller Argent, as owner and operator of the site can confirm its approval of that initiative. In this respect, if the council proposals are confirmed by the respective Inspectors, the Caerphilly Draft Plan will relate coherently to the emerging Merthyr Tydfil LDP.

4 Is the Plan development strategy sound in sustainability terms and founded on robust evidence?

- Does the Plan strategy seek a sustainable balance between where people live and access to employment, commercial, community and leisure facilities?

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4.1 No Comment

- Does the Plan have adequate regard to the objective of reducing reliance on car-borne travel?

4.2 No Comment

- Does the Plan seek an appropriate balance between re-use of brownfield sites and development of Greenfield land?

4.3 No Comment

- Does the Plan strategy demonstrate a sustainable approach to achieving levels and types of development appropriate to the character, role and function of individual settlements?

4.4 No Comment

5 Delivery of Plan strategy and policies

- Are the strategy aims and key objectives consistent with the provisions of the Plan?

5.1 No - See response to Query 3 above.

- Does the Plan adequately demonstrate how and when development will be realised over the Plan period? Is there a need for greater clarity on strategic level timing, linkages to infrastructure and funding sources?

5.2 No Comment

- Is a clearer monitoring framework needed within the Plan, linked to specific objectives to indicate when strategy or policy review will be required?

5.3 No Comment

6 Plan strategy: development and flood risk.

- Does policy SP8 Flood Risk satisfactorily translate national policy concerning development and flood risk down to the local level? Is it drafted as a landuse policy?

6.1 No Comment. Focused Change FC22 proposes the removal of the policy.

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- Do the Plan's development allocations demonstrate adequate recognition of national policy concerning development in zone C areas?

6.2 No Comment.

- Is reference required within policy SP7 Planning Obligations to measures which seek to enhance flooding resilience where development is found to be justified in areas of flood risk?

6.3 It is Miller Argent's view that if any reference to flood risk is to be made, it should not form part of the policy but should be confined to a narrative statement referring the reader to Technical Advice Note 15: Development and Flood Risk.

7 Do other strategy and countywide policies within the Plan have a distinctive local dimension? Do they satisfactorily translate national policy down to the local level? Do they unnecessarily re-iterate national policy requirements?

- Policy SP10 Renewable Energy
- Policy SP22 Transport Requirements for Development
- Policy CW 1 Sustainable Buildings
- Policies CW 4 and CW 5 General Design Considerations
- Policy CW 7 Design Considerations – Telecoms Apparatus

7.1 No Comment

8 Other policy matters

- Is the requirement to maintain or enhance the main characteristics of SLAs and VILLs in Criterion A of policy CW 8 Natural Heritage Protection too restrictive?

8.1 Miller Argent refers the Inspector to Paragraphs 2.19 to 2.31 of their response to the issues raised on the agenda of Session 9 - Minerals and Waste.

- Is policy CW 9 Trees, Woodland and Hedgerow Protection sufficiently clear and precise? Is the policy unreasonably onerous?

8.2 No Comment

- Should policy CW 17 General Locational Constraints allow for tourism and affordable housing as potentially suitable developments outside settlement boundaries?

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8.3 No Comment

- Does the supporting text (para 2.43) to policy CW 22 Locational Constraints – Conversion, Extension and Replacement of Buildings in the Countryside need to include reference to forestry complexes?

8.4 No Comment

- Does policy CW 23 Gypsy and Traveller Caravan Sites satisfactorily translate national policy down to the local level?

8.5 No Comment

- Is policy CW 26 Supplementary Planning Guidance drafted as a land use policy? Is a policy concerning this necessary?

8.6 No Comment

- Is proposed additional policy CW xx Water Protection (Focussed change FC 03) needed to make the Plan sound? Does it unnecessarily reiterate national policy and the requirements of other legislation? Does it have a distinctive local dimension? Is requirement A precise and reasonable?

8.7 The wording of the new policy renders its purpose undeliverable and makes the plan unsound.

“Water Protection Policy

CWXX – Development proposals will only be permitted where;

A They do not have an adverse impact upon the water environment, and

B Where they would not pose an unacceptable risk to the quality of controlled waters (including groundwater and surface water).”

8.8 The wording at criteria A is undeliverable. It is impossible for any development of land to take place without there being some adverse impact on the water environment, whether temporary or otherwise. Whilst development is underway, construction works inevitable create deposits that can get washed into the water environment by rain. Adequate provisions are obviously required to avoid or minimize such impacts, but it is unreasonable and unsustainable to have a planning policy that requires no adverse impact at all. Instead, the policy should refer to ‘unacceptable adverse impacts and provision needs to be included within the policy for suitable preventative

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measures to be submitted and approved with the planning authority to minimize such impacts.

8.9 The policy wording goes on to include the following text:

“Climate change, increases in populations and changes in lifestyle have all had an impact upon the water environment and the pressures upon it. Climate change will affect the amount of rain that falls, it will impact upon river flows, replenishing of groundwater, the quality of water available and incidents of flooding, particularly localised, flash flooding. The demands and pressures on water resources will also change, with the scale and nature of the problem differing across Wales, as will the approach to dealing with the problems. The approach to the protection of the water environment will need to take into account the quality and quantity of the local water resource, and how this impacts upon the wider environment in terms of preventing further deterioration of aquatic ecosystems, associated habitats, fisheries, promoting the sustainable use of water, and controlling water abstractions.”

8.10 The text does not appear to form part of the policy statement. It does not add to the criteria or the effectiveness of the policy but appears to be background information that seeks to justify the policy. As such, the text would sit more comfortably in the supporting written statement that follows the policy.

Strategic Environmental Assessment/Sustainability Appraisal (SEA/SA)

8.11 Because of the total prohibition of ‘adverse impact on the water environment’ inherent in the proposed additional policy, the impact this would have on the ability to carry out any physical development of land within the borough would result in a negative effect on the following assessment tests of the SAE/SA:

- Tests 6 to 9
- Test 14
- Tests 17 to 24
- Test 30
- Test 40
- Test 43
- Test 45
- Tests 69 to 72
- Tests 78 to 80

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- 8.12 Miller Argent questions whether the policy could in any way have a positive effect on Test 50, as claimed by the Authority.
- 8.13 Miller Argent also questions the following statement at the end of the SAE/SA, given that the proposal is to add a new policy to the plan:

Recommended Changes To The Plan

None

- Does the absence of a policy recognising the need to rationalise, replace and redevelop redundant health and hospital sites make the Plan unsound?
- 8.14 No Comment

Submitted on behalf of
Miller Argent (South Wales) Limited
6th April 2010