

2020/0721/OTS: Application for Outline Planning Permission with some matters reserved, for the erection of 3 no. dwellings with details of access. Corner Cottage, Quarry Lane, Leigh on Mendip.

Mineral Safeguarding Assessment

Introduction and Terms of Reference

This report has been produced by Cuesta Consulting Ltd. for re:DSGN Ltd. to support a re-submission of the above planning application, following an earlier refusal by Mendip District Council, in April 2020. It addresses the need for the application to be supported by a Mineral Resource Assessment.

In their Decision Notice, the Council observed that *“The proposed residential development falls within a Mineral Safeguarding Area and the application fails to demonstrate that the proposed housing development would not sterilise future mineral extraction at the nearby Halecombe Quarry and Barns Close Quarry. The proposal is therefore contrary to policy SMP9 of the Somerset Minerals Plan (2015); the NPPF, particularly section 17; and the Mineral Products Association/Planning Officer Society (POS) practice guidance for mineral safeguarding”*.

This assessment seeks to examine the position regarding these matters. It has been prepared by Cuesta’s Director – Dr. Alan Thompson (C. Geol., FGS, MRTPI) – a highly experienced geological and minerals planning consultant, based in Somerset, with detailed first-hand knowledge of mineral extraction in the Mendip area. That experience includes recently preparing a very similar assessment, completed in October 2021, for a directly adjoining proposed development of 40 dwellings by T and A Land Associates.

Dr. Thompson’s other relevant experience includes leading a major project, undertaken for and partly funded by Somerset County Council, which developed an ecosystems approach to long-term mineral planning in the Mendip Hills. Halecombe Quarry was one of ten detailed case studies included in that work and involved close liaison with Tarmac’s own geologists and planners to examine the long-term future of the site. Alan has also worked for the operators of nearby Torr Quarry (Aggregate Industries and, previously, Foster Yeoman Ltd.) to provide statements of ‘Need’ in relation to their last two planning applications for quarry deepening. Full details of Alan’s relevant experience are set out on his Curriculum Vitae, attached.

Policy Background

National Planning Policy

National Planning Policy on minerals is set out in Chapter 17 of the National Planning Policy Framework (NPPF), last revised on 20th July 2021. Paragraph 210 (c) of the NPPF identifies the requirement for safeguarding mineral resources by defining **Mineral Safeguarding Areas** (MSAs) and for adopting appropriate policies so that known locations of specific minerals resources of local and national importance are not sterilised by non-mineral development where this should be avoided. To that end, paragraph 212 states that *“Local planning authorities **should not normally permit other development proposals in Mineral Safeguarding Areas if it might constrain potential future use for mineral working**”*. The first section of emboldened text (our emphasis) is normally addressed by the identification of provisos or exemptions within minerals safeguarding policies in Local Plans. The second section makes clear that the purpose of safeguarding is to avoid constraining future mineral working. It follows that, if such working is already constrained in a particular part of a Mineral

Safeguarding Area (e.g. by proximity to significant existing development such as an historic village), then there would be no justification (on mineral safeguarding grounds) for precluding further development. This is an important point which is of direct relevance to the proposed development.

Somerset County Council’s Minerals Safeguarding Policy – SMP9

Somerset County Council’s current minerals planning policies are set out in the Somerset Minerals Plan, adopted in February 2015. Policy SMP9 relates specifically to Mineral Safeguarding Areas, the locations of which are formally identified on Map 8 at Appendix B of the Plan.

The mineral of relevance to this case is Carboniferous Limestone – an acknowledged and important source of crushed rock aggregate which is widely extracted within the Mendip Hills and which is of both regional and national significance. As explained in Section 11 of the Plan, the Council has defined the MSAs for crushed rock as those which lie within a buffer zone surrounding active, inactive and dormant quarry sites (rather than identifying the whole of the resource outcrop). For major (high output) active quarries, the buffer extends to a radius of 400m from the permission boundaries.

The MSA of relevance to the proposed development is that relating to Carboniferous Limestone resources in the vicinity of Halecombe Quarry (one of the major, active quarries) and Barn Close (a dormant quarry which has not been worked for many years). The proposed development site falls entirely within this zone.

Provisos

In line with NPPF requirements, Policy SMP9 states that planning permission should not be granted for non-mineral development within the MSA *unless*:

- a) the development within the Mineral Safeguarding Area is exempt, as set out in the exemption list in Table 6;

Table 6: Exemption list

- *Applications for householder development within the curtilage of a property.*
- *Applications for extensions or alterations to existing buildings and for change of use of existing development which do not fundamentally change the scale and character of the building/use.*
- *Development in accordance with allocations of an adopted or deposited local plan where the plan took account of prevention of unnecessary mineral sterilisation in consultation with the Mineral Planning Authority and industry and determined that prior extraction should not be considered when development applications in a Mineral Safeguarding Area came forward.*
- *Minor developments such as fences, walls, bus shelters, works to trees.*
- *Advertisement applications.*
- *Applications for temporary planning permission where the development can be completed and the site restored to a condition that does not inhibit extraction within the timescale that the mineral is likely to be needed.*
- *Reserved Matter applications unless the Mineral Planning Authority specifically requested consultation at the outline stage.*
- *Applications for Listed Building Consent unless specifically requested.*
- *Prior extraction is not practicable and/or viable and there is a demonstrable overriding need for the proposed development.*

or

- b) It can be demonstrated that the mineral resource, operations or facilities will not be detrimentally affected, and the development proposal would not suffer unacceptable adverse impacts as a result of the mineral operations; or

- c) The mineral can be extracted where it would otherwise be sterilised by development providing the prior extraction would not cause unacceptable harm to local communities or the environment and the primary use has been deemed acceptable by the relevant planning authority; or
- d) the applicant can demonstrate to the satisfaction of the Mineral Planning Authority that the mineral concerned is not of economic value.

As this report will show, the first two of these provisos are considered to be applicable to the proposed development and, for both of those reasons, the proposed development should not be precluded by the safeguarding policy requirements of SMP9.

The Mineral Products Association/Planning Officer Society (POS) practice guidance for mineral safeguarding

Although the MPA/POS document is not policy, it represents well-established good practice with regard to mineral safeguarding issues and needs to be taken into account. Version 1.4 of the guidance was published in April 2019.

Paragraph 1.3 of the document confirms that *“safeguarding aims to avoid the un-necessary sterilisation of mineral resources, where non-mineral development effectively prevents surface extraction of underlying mineral”*. As well as **direct** sterilisation, where built development constructed on land bearing a mineral resource prevents its current or future extraction, paragraph 1.8 notes that sterilisation may also be **indirect**, explaining that *“Development in proximity to an existing quarry and/or mineral resource or minerals infrastructure site may be sensitive to impacts, especially noise, and lead to constraints on extraction or operation. It can also constrain accessibility of sites and constrain productivity”*. Both direct and indirect effects are therefore considered in this assessment.

Paragraph 3.7 of the guidance notes that the **‘Agent of Change’** principle, as set out in para. 187 of the NPPF, may also be relevant. This states that *“Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established”*. This, clearly, is potentially of relevance in the case of proposed new development on land adjacent to an existing operational quarry.

The guidance provides considerable detail on what should be included in a **Mineral Resource Assessment**, in order to demonstrate compliance with mineral safeguarding policies. Paragraph 4.24 specifically notes that the assessment should provide the following information:

- *The type of mineral resource(s) thought to be present;*
- *the potential extent of sterilisation which could occur as a result of the development in terms of tonnage;*
- *Economic value and viability of the mineral, i.e. the market interest.*
- *Site specific considerations that may affect feasibility or acceptability of extraction from the Site;*
- *Potential options for prior extraction including the amount that could be extracted, nearby operators that could extract and process the material, or opportunities for on-site use.*

Whilst all of these points need to be considered, para. 4.28 notes that *“desk-based assessments can provide some of the information particularly where it can be clearly demonstrated that the site would be unlikely to ever be suitable for minerals extraction or sterilisation would be minimal”*. As will be demonstrated in this assessment, that is the situation which applies in this case.

Paragraph 4.34 advises that “*The Mineral Resource Assessment needs to set out clear **conclusions** as to the viability of extraction of mineral from the proposed development site, taking account of the presence or absence of constraints, the amount (tonnage) and economic value of the mineral that will be sterilised*”. In this case, whilst the theoretical economic value of the mineral is fully acknowledged, neither the site itself nor the resources potentially affected by it would ever be suitable for mineral extraction (for the reasons set out in this assessment). The market value of those resources is therefore arguably zero, and their precise tonnage becomes irrelevant.

Paragraph 4.35 *et seq.* of the guidance relate to the concept of ‘**Prior Extraction**’ (i.e. allowing some or all of the mineral to be extracted before the new development takes place). The guidance notes, however, that this “*is likely to be an option for relatively shallow deposits (for example sand and gravel, building sand, silica sand) rather than rock*”. As will be shown by this assessment, it would not be appropriate here.

Finally, paragraph 4.25 of the guidance emphasises that “*the Minerals Resource Assessment must be to a standard acceptable to the Minerals Planning Authority, which may mean being carried out by a **competent person** with the appropriate qualifications/professional background*”. As noted earlier, full details of Dr. Thompson’s qualifications and relevant experience are set out on his Curriculum Vitae, attached.

Assessment

It has already been acknowledged that the mineral resource in question here – Carboniferous Limestone – is an important and valuable commodity. It is also fully accepted that such resources should not be needlessly prevented from future working by the introduction of new constraints. As will be shown, however, the resources in question here are already constrained by other factors and, for that reason, the mineral safeguarding policy requirements are inapplicable.

Applicability of NPPF safeguarding requirements

As noted above, paragraph 212 of the NPPF requires that non-mineral development in a Mineral Safeguarding area should not normally be permitted “*if it might constrain potential future use for mineral working*”. In this case, however, the resources in question would NOT be constrained from future working by the proposed development:

- those which fall outside Halecombe Quarry, in the vicinity of the proposed development, are effectively already sterilised and would not be capable of being worked in future, whether or not the proposed development takes place.; and
- those within quarry itself are already being worked, in accordance with agreed planning conditions, despite the proximity of existing development nearby, and the future continuation of such working would not be compromised by the proposed development;

Both of these points are explained further in the section on the applicability of SMP9 Proviso (b), below.

Applicability of SMP9 Proviso (a)

Proviso a) is applicable by virtue of the last exemption in Table 6: “*Prior extraction is not practicable and/or viable and there is a demonstrable overriding need for the proposed development*”.

As acknowledged in paragraph 4.35 of the MPA/POS Practice Guidance, prior extraction is a concept which lends itself primarily to relatively shallow mineral deposits, where new development can take

place in the quarry void following the cessation of extraction. In this case, however, the deposits are far too deep to make this a practicable option. The Carboniferous Limestone strata in this part of the Mendips are tilted into an almost vertical orientation. The maximum depth of working is therefore not constrained by the thickness of the deposits; it is limited only by the size of the excavation and geotechnical constraints on the steepness of the quarry sides. At Halecombe Quarry, the current planning permission allows for extraction to take place down to an elevation of 10m AOD – approximately 165m below the original ground level. On completion, the quarry will be restored to a very deep lake. Such an operation, if applied to the resources within the area of the proposed development would clearly be unsuitable for subsequent built development. **Prior extraction would therefore NOT be a practicable option.**

Proviso a) also requires **the need for the development** to be considered. This has been demonstrated separately, within the planning application itself.

Proviso (a) of SMP9 is therefore applicable, meaning that the proposed development should be exempt from minerals safeguarding requirements.

Applicability of SMP9 Proviso (b)

Proviso (b) is also applicable. This provides protection to both unworked resources and existing mineral workings, each of which are examined in turn, below.

Unworked resources

Figure 1, below, illustrates the distribution of Carboniferous Limestone resources, as mapped by the British Geological Survey, in relation to the MSA (all of the colour-shaded areas) and other boundaries. The white-shaded land marked by the brown asterisk on this map is the proposed development Site.

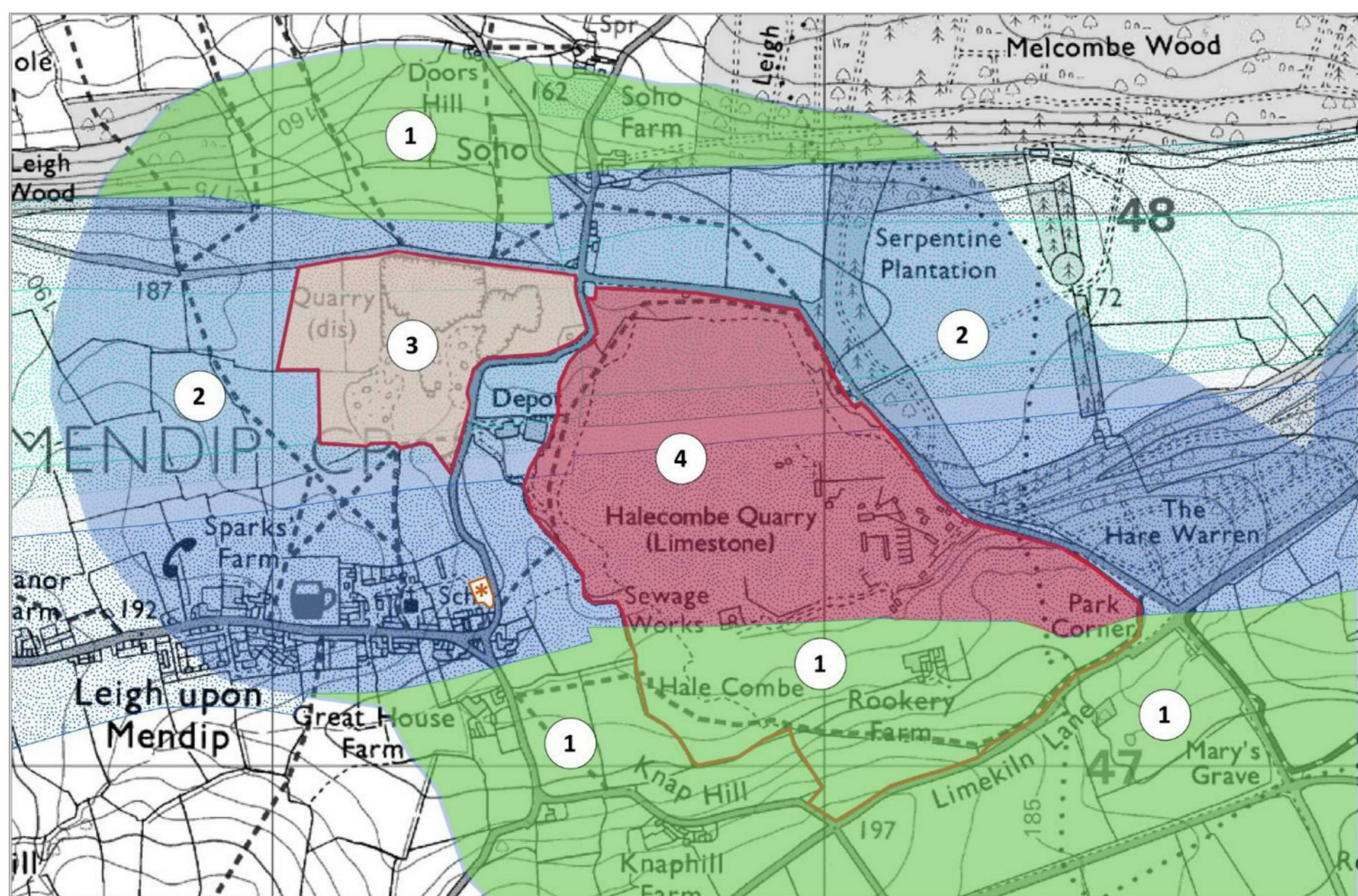


Figure 1: Categories within the Mineral Safeguarding Area around the proposed development site
 (Stippled areas correspond to mineral resources (as mapped by the British Geological Survey);
 colour-shaded areas correspond to subdivisions of land within the MSA. See text below for details).

In addition to the existing workings, which are discussed separately below, the safeguarded resources fall into three main categories:

1. Land (*shaded green*) which, despite being within the MSA, is not underlain by mineral resources;
2. Safeguarded resources (*shaded blue*) which fall outside the boundaries of extant minerals planning permissions; and
3. Safeguarded resources (*shaded brown*) which fall within the planning permission boundary for Barn Close Quarry.

The situation relating to each of these categories is as follows:

(1) Land not underlain by mineral resources

As noted above, Somerset County Council's approach to the safeguarding of Carboniferous Limestone aggregate resources has been to identify land within a 400m radius of existing quarries, rather than being based on the extent of the resource outcrop itself. For this reason, there are safeguarded areas which, in some cases, extend beyond the outcrops of known resources. These areas, which include land both within and outside the extant planning permission boundary at Halecombe Quarry, are shown in green on Figure 1. By definition, these are not areas of safeguarded mineral resources, and the safeguarding policy does therefore not apply.

(2) Safeguarded resources outside mineral planning permission boundaries

The areas shaded blue on Figure 1 are those in which the MSA is underlain by known mineral resources which need to be safeguarded from needless sterilisation and thereby reserved for potential future extraction. They include land, both within and on all sides of the proposed development, which is already sterilised by virtue of its proximity to existing development in the village of Leigh-on-Mendip. If it is assumed that a buffer of 400m (as used in the definition of the MSA boundary) is required between any existing built development and any future quarrying, then none of the category 2 areas within 400m of the Site could be quarried – whether or not permission is granted for the proposed development.

It should also be noted that the most recent (March 2019) planning permission for mineral extraction at Halecombe Quarry established that this would be the maximum lateral extent of the excavation, with no prospects of extending the quarry further towards the proposed development site in future years. This is not least because of the presence of a major geological feature – the 'Luckington Fault Zone' – which effectively defines the western extent of the quarry: the rock within and to the west of this zone is considered (by the operator) to be of inferior quality and/or far more difficult to work, because of geotechnical constraints.

For both of these reasons, the category 2 resources within and surrounding the proposed development could not be worked, and their status could not therefore be 'detrimentally affected' by that development.

Beyond the 400m radius (from the site), there are category 2 areas at the extreme west of the MSA and to the east of Halecombe Quarry which could, theoretically, be worked. However, by virtue of the distance involved, neither of those areas would be affected by the proposed development.

(3) Safeguarded resources at Barn Close Quarry

Barn Close Quarry is identified, in the Somerset Minerals Plan, as a Dormant site – one which has a valid planning permission for the winning and working of minerals, but which cannot be worked without modern planning conditions being agreed. More importantly, the MPA required the

cessation of quarrying at this site through a Section 106 Legal Agreement when planning permission was granted for the expansion of the much larger Whatley Quarry. Future mineral extraction at Barn Close Quarry therefore cannot lawfully happen without a variation of the S106 Agreement which would seem most unlikely to happen. That view is reinforced by consultation comments made by SCC's minerals officer (Andrew Gunn) in relation to a recent planning application for non-mineral development within the old quarry (reference 2021/0125/FUL). Mr. Gunn observed that "... *it is considered unreasonable to ... raise an objection on the grounds of possible sterilisation of mineral resources*". In effect, the resources at this site are already sterilised; they would therefore not be worked, whether or not permission is granted for the proposed development.

It may be concluded that, although the safeguarded mineral resources within and surrounding the proposed development site would *theoretically* be sterilised by that development, in practice they are **already sterilised by other existing constraints**. They would not be capable of being worked. Their future working would therefore NOT be 'detrimentally affected' by the proposed development.

Existing Workings

The existing workings at Halecombe Quarry comprise both quarried resources (area No. 4, shaded red on Figure 1) and an area of land to the south (shaded green), which is not underlain by resources but where a variety of processing operations take place. Both of these areas fall within the current planning permission boundary for the quarry and the western parts of each area fall within 400m of the proposed development. That development could *potentially* be susceptible to impacts from quarrying and processing operations within these areas – particularly noise and blasting vibrations.

In practice, however, as noted in Cuesta's previous Mineral Safeguarding Assessment for an adjoining site, previous assessments (carried out for the quarry operator) have determined that existing development within Leigh on Mendip, directly adjacent to the proposed development, would not be affected by noise from the quarry (subject to the quarry operator's continued compliance with existing planning conditions). It follows, therefore, that new residential properties at a similar distance from the quarry and in the same general direction should not impose any additional constraints on the continued operation of the quarry. SCC's own Acoustics Specialist has noted that, whilst there may be an increased risk of reported instances of noise disturbance from new/future residents, it is not considered likely that the proposed development would represent a constraint to the current working at Halecombe subject to adherence by the operator to the various planning conditions.

It may be concluded that continued working within the permitted area of extraction at Halecombe Quarry, in accordance with existing planning conditions, would not give rise to unacceptable adverse impacts on the proposed development and, therefore, that the development should not constrain those quarrying operations.

Taken together with the situation relating to unworked resources this demonstrates that proviso (b) of SMP9 is applicable and that the proposed development should therefore be exempt from minerals safeguarding requirements.

Conclusion

The need for the proposed development has been demonstrated elsewhere, in the planning application itself. This report has focused purely on the mineral resources and has shown, firstly, that prior extraction of mineral resources beneath the site would not be practicable. Secondly, and more generally, it has shown that, although the future extraction of safeguarded mineral resources

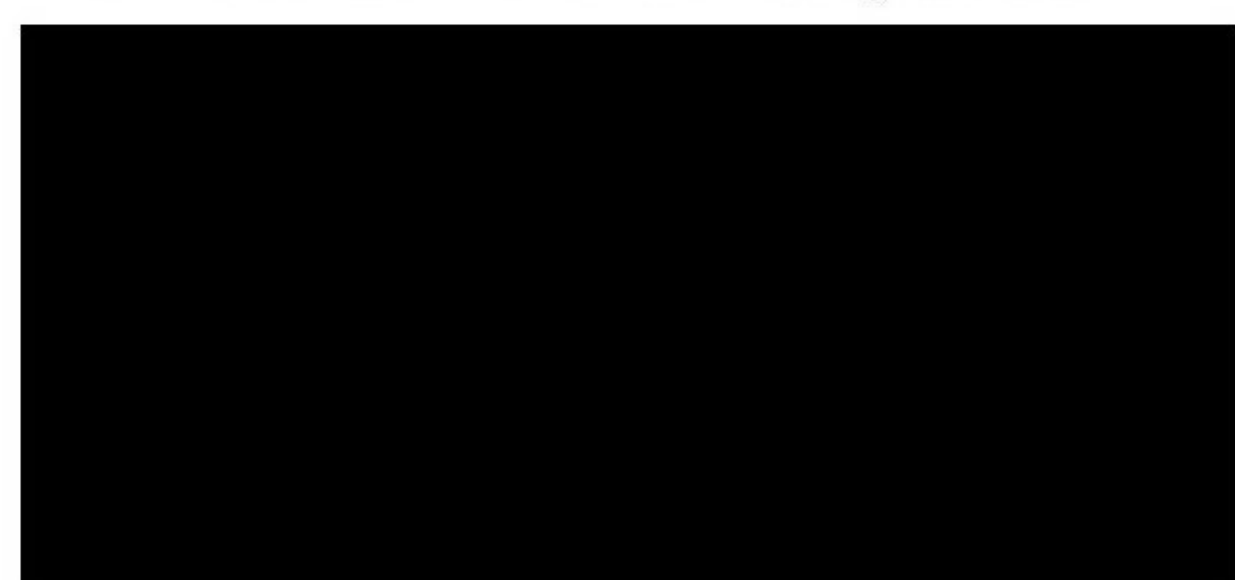
within this area would *theoretically* be compromised by the proposed development, in practice they are already sterilised by existing development and/or other practical constraints. In practice, those resources cannot be worked, and their status would therefore not be detrimentally affected by the proposed development. Equally, continued working within Halecombe Quarry itself should not be compromised by the proposed development, since the new housing would be in an area which has been shown not to be affected, to an unacceptable degree, by noise associated with the quarrying.

Two of the four provisos relating to the minerals safeguarding policy SMP9 have therefore been shown to be applicable to this site, meaning that the proposed development should be exempt from minerals safeguarding requirements.

This is in line with the requirements of the NPPF, which makes clear that the purpose of safeguarding is to avoid constraining future mineral working. **It follows that, if such working is already constrained in a particular part of a Mineral Safeguarding Area, then there would be no justification (on mineral safeguarding grounds) for precluding further development.**

For all of these reasons, it is reasonable to conclude that the proposed development should not be precluded on the basis of the safeguarding requirements of either the NPPF or Policy SMP9.

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