

Appeal Decision Notice

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Decision by Iain G Lumsden, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: P/PPA/110/699
- Site address: Land at South Orrock, Balmedie, Aberdeenshire, AB23 8XY
- Appeal by RMB Developments Ltd against the decision by Aberdeenshire Council
- Application for planning permission APP/2005/1117 dated 31 March 2005 refused by notice dated 27 July 2007
- The development proposed: Extraction of sand and gravel
- Date of public local inquiry: 17-19 June 2008

Date of appeal decision: 9 January 2009

Decision

I dismiss the appeal and refuse to grant planning permission for the extraction of sand and gravel at South Orrock.

Reasoning

1. This appeal involves a proposal to extract 1.25m cubic metres of sand and gravel from an area of agricultural land at South Orrock, which is located some 1.3km to the west of Balmedie. It is proposed to remove the minerals in 4 phases with reinstatement and restoration taking place at the end of the extraction period. The excavated top soil would be stored on site and used to form earth bunds around the workings. A new quarry access road from the B977 would be created adjacent to Drumhead Cottage. An area located in the southern part of the site would house crushing, washing/screening loading plant together with tipping and loading facilities.
2. In this appeal, I consider that the main issues are: (i) whether the impact of the proposals would be consistent with the relevant provisions of the development plan, in terms of their effect on the natural and built environment, the landscape and the residential and visual amenity of the area; and, (ii) whether there are any other material considerations, such as the terms of the relevant national, planning policy on mineral extraction or the economic benefits of the development that would justify the grant of planning permission. The development plan for the area comprises the Aberdeen and Aberdeenshire Structure Plan 2001-2016, approved in December 2001, and the Aberdeenshire Local Plan, adopted in June 2006.



The Aberdeen and Aberdeenshire Structure Plan

3. Dealing firstly with the approved structure plan, I consider that Policy 24 (Minerals) in the plan is the most relevant to this appeal. It is indicated in the text associated with this policy that minerals such as sand and gravel are a finite resource and that they are important with respect to their use within the construction industry and the employment opportunities that they can create. It is however emphasised that mineral workings can have adverse environmental effects, including visual impact, dust and noise. Consequently, the plan indicates that the extraction of minerals has to be reconciled with the need to protect the environment, particularly with respect to the safeguarding of natural, built and cultural heritage resources and the residential amenity of existing communities. In addition, it is recognised that the distance materials must be transported to their point of use should be minimised.

4. In an effort to try and ensure that mineral workings are not sited in the most sensitive locations, the plan sets out a hierarchical approach to the consideration of development proposals. The hierarchy set out in the plan relates to the relative environmental significance of an area and its ability to accommodate mineral workings. With respect to mineral extraction, Tier 1 covers areas of international significance for nature conservation, including Special Protection Areas (SPAs), Special Areas of Conservation (SACs) and Ramsar Sites. Tier 2 deals with sites of national significance and it includes National Scenic Areas (NSAs), Sites of Special Scientific Interest (SSSIs) Scheduled Ancient Monuments, Listed Buildings, Historic Gardens and Designed Landscapes, and prime quality agricultural land. Tier 3 includes areas of more local significance such as Local Nature Reserves, the Green Belt, other archaeological sites, areas of local landscape significance, buffer zones extending 400m from the boundary of existing settlements and identified future housing sites. Tier 4 covers those areas not included in any of the categories covered by Tiers 1-3. In terms of this hierarchy, mineral extraction is considered to be more acceptable within a Tier 4 area than in an area which is covered by a local, national or international designation.

5. Turning to the terms of Policy 24, it is stated that proposals for mineral extraction should be located so that habitats, species and landscapes of value are safeguarded. As a result, proposals for mineral extraction should be considered on the basis of a sequential exploration of the tiered approach outlined above, which is set out more explicitly in Policy 26 and Table 5 in the structure plan. In terms of this approach, the appeal site lies within a Tier 4 area, which Policy 26 refers to as other (preferred) areas. The text associated with Policy 26 indicates that developments, such as mineral extraction, should be directed in the first instance to Tier 4 areas. Policy 26 goes on to indicate that development in a Tier 4 area may be permitted subject to the individual site and local circumstances identified in the local plan. I note that Policy 24 also indicates that when considering mineral applications regard is to be paid to the desirability of maintaining a 'landbank' that is sufficient to provide for a 10-year supply of sand and gravel. In addition, this policy requires that local plans should (i) set standards for the working, restoration and aftercare of mineral workings; and, (ii) avoid sterilising workable mineral reserves.

6. Dealing firstly with the issue of the need to safeguard important habitats, species and landscapes, the appeal site is located within a Tier 4 area. In these circumstances, the proposed development would not involve the use of any land that has been designated for



its international, national, or local importance for nature conservation, landscape quality or historic interest. In addition, being within a Tier 4 area, the site would be within a preferred area for the extraction of minerals. With respect to this policy, an application for the removal of sand and gravel on the appeal site would in principle be acceptable in broad locational terms. However, while the appeal site may lie within a preferred area for mineral extraction, it is still necessary to consider whether the proposal is acceptable in terms of the detailed operational and site specific circumstances set out in the planning application. As acknowledged in Policy 24, these more detailed matters can more appropriately be dealt with in the context of the relevant policies in the local plan.

7. With respect to the need for mineral extraction, Policy 24 indicates that in assessing planning applications consideration should be given to the desirability of maintaining a landbank sufficient to provide for a 10 year supply of sand and gravel. Neither the policy nor the text of the plan makes any specific reference to 'market areas' or how these should be defined. I note that conflicting views were expressed by the parties on how this matter should be interpreted at the inquiry. On behalf of the appellant it was indicated that the identified 'market area', should be defined as being the area lying within 30km from the line of the proposed Aberdeen Western Peripheral Route (AWPR). Within this area it was stated that the estimated demand and supply of sand and gravel from existing quarries and known reserves with planning permission would provide for only a 6.7 year supply of these minerals. The council however considered that the market area proposed by the appellant was too restrictive and did not reflect all the relevant sources of supply or the likely pattern of demand. While acknowledging that there were significant difficulties in defining market areas for sand and gravel and estimating the extent of available reserves, the council considered that the assessment put forward by the appellant was partial and incomplete and that it could not be relied upon to provide an accurate indication of the situation in the Aberdeen area. In the council's opinion, the information contained in the Scottish Aggregates Survey 2005 (SAS), published by the Scottish Government in 2007, provided the most reliable and up to date picture of the available sand and gravel reserves in the area. This document indicated that within the area defined as 'North East Scotland' (Aberdeen City, Aberdeenshire and Moray) there were consented reserves of sand and gravel that would provide between 25 and 27 years supply at 2005 production levels.

8. I note that the SAS document emphasises the difficulties of defining market areas in Scotland. It also indicates that the geographic areas used to collate information in the SAS are not intended to reflect 'market areas'. It is noted that the information in the survey is intended to inform the planning process while maintaining the commercial confidentiality of operators. The document does however indicate that market areas are generally set in relation to the economic viability of transporting the mineral resource. On this point, I am aware that SPP4: (Planning for Minerals) states that construction aggregates are generally transported no more than 50km by road before they become uneconomic. I appreciate that in support of sustainability objectives it is desirable, where feasible and acceptable in environmental and planning terms, to have new mineral operations located as close as possible to their end markets. However, in this case I do not consider that the use of a market area that is limited to 30km from the AWPR accurately reflects the commercial realities of the existing and prospective market for sand and gravel in the Aberdeen and Aberdeenshire area. Whereas historically the demand for sand and gravel may have been predominantly focussed on Aberdeen itself, in more recent times the level of development has been more evenly split between the city and the surrounding landward area.



9. Consequently, I believe that it is appropriate when considering the demand and supply for sand and gravel to adopt a market area that more accurately reflects the dispersed pattern of development in the wider city region. I am aware that the Report of Survey produced as part of the preparations for the structure plan indicates that the two main market areas are within 20 miles of Aberdeen and 15 miles of Peterhead. However, this position relates to a minerals policy that has been in operation since 1979 with certain revisions in 1982 and 1990, and with the last review being based on an assessment of supply and demand carried out in 1988. For the reasons referred to above, I consider that the approach referred to in the Report of Survey has been overtaken by events. I also believe that it is significant that there is no reference in the wording of the structure plan policy, the associated text or the glossary to the 'market areas' referred to in the Report of Survey. While the concept of maintaining a land bank equivalent to 10 years supply of sand and gravel remains relevant, given the changing pattern of development and the significant improvements to the main road system, I believe that the appropriate area within which such a matter should be considered must be drawn more widely than the 30km radius suggested by the appellant.

10. I also note that differing approaches have been adopted by the parties to the estimation of the demand for sand and gravel in the area. The appellant's assessment of demand is based on an estimate of the per capita sales of sand and gravel for the population of the proposed restricted market area. I note that it has been acknowledged that this is a far from precise methodology. On the other hand, the position relative to the 'demand' situation in the SAS is based on the figures provided by the operators of the output of sand and gravel from the quarries in the area with an additional allowance being made for any material that has to be imported. Using this approach, the SAS provides a projection of the number of years' supply of sand and gravel which remains in the landbank. While I recognise that there can be no absolute precision on these matters and that the figures in the SAS are sometimes simply the best available estimates, I prefer the approach adopted in the SAS because it provides a consistent basis for the collection and analysis of information on mineral resources across Scotland.

11. Drawing all these matters together, I believe that there are significant reservations concerning a number of the assumptions used by the appellant to estimate the projected supply and demand situation and to arrive at the conclusion that the sand and gravel landbank in the area is insufficient to provide a 10 year supply. Furthermore, I am aware that the information contained in the SAS indicates that there is a very substantial landbank of sand and gravel in the North East of Scotland area amounting to some 25 years supply at present rates of extraction. While I appreciate that part of this landbank may be located in Moray and therefore be some distance from the Aberdeen area, I have no information to indicate that a very substantial proportion of the landbank identified in the SAS does not in fact lie within an economic haul distance of some 50km from the wider Aberdeen area. Given my reservations regarding the appropriateness of using the market area defined by the appellant and the absence in the structure plan of any reference to a defined 'market area', I consider that for the purposes of this appeal, Policy 24 must be interpreted as relating to a landbank within the wider Aberdeen city region area and not the restricted 30km distance from the city referred to by the appellant. In these circumstances, I am not persuaded that it has been demonstrated that the existing reserves of land with planning



permission for the extraction of sand and gravel are not sufficient to provide for at least a 10-year supply of sand and gravel in Aberdeen and the surrounding area.

The Aberdeenshire Local Plan (2006)

12. Turning to the adopted local plan, I consider that the policies that are of most relevance to the determination of this appeal are Policies Env\13 (Mineral Extraction), Gen\1 (Sustainability Principles), Env\18 (Listed Buildings) and Inf\1 (Roads and Drainage).

13. Dealing firstly with Policy Env\13, I note that in the justification for this policy it is indicated that Aberdeenshire has valuable economic resources of hard rock and sand and gravel and that there is also a high level of consumption of these minerals in the city and surrounding area. It is indicated that the aim of the policy is to promote the working of mineral whilst ensuring that the environment is protected. This is to be achieved in part through the use of the sequential approach to site selection. The provisions of Env\13 are therefore consistent with and reflect the terms of Policies 24 and 26 in the structure plan. The policy in the local plan states that mineral developments will be approved, in principle, if they conform to the 4 tier approach set out in the structure plan, subject to a number of caveats. These caveats require that in all cases: (i) steps must be taken to ensure that the character of the site is respected and any adverse effects mitigated as far as possible; (ii) land restoration and after use should be agreed in advance with the council; and, (iii) developments should not have any significant adverse effects on the amenity of residents living near the site.

14. With respect to the first two criteria in this policy, I note that a scheme of landscaping has been prepared to in an effort to mitigate the visual and noise impact of the proposed mineral operations. I am also aware that detailed proposals for the restoration of the site once the extraction of the sand and gravel has been completed have been produced and I note that the council has not raised any issues regarding this matter. In terms of the third criterion, I intend to consider under this heading the implications of the development for noise, dust and vibration levels in the area together with the effect of the proposals on residential and visual amenity.

15. In terms of the potential noise and dust issues, I note that the council's Environmental Health Officer has indicated that on the basis of the available information it would appear that the proposed development would have an adverse impact on a number of properties surrounding the site. However, the council officials have indicated that provided a number of planning conditions are imposed and that these are complied with, there would not be grounds for refusing the application on environmental health grounds. Dealing with the issue of noise, I am aware that there are 6 properties within 300m of the boundary of the proposed workings and a further 2 properties within 100m of the proposed access road. I also note that the operations that are likely to give rise to significant noise emissions are the use of the washing plant, the screening plants and the crusher together with the movement of HGVs and tracked loading vehicles within the site.

16. On the basis of measurements carried out by the council's environmental health department relative to the background noise levels at the properties closest to the appeal site and the predicted noise levels resulting from the extraction activity on the site provided by the appellant's consultant, I consider that it is appropriate to apply the advice contained



in PAN 50, Annex A: The Control of Noise at Surface Mineral Workings. The PAN indicates that the daytime noise levels resulting from quarrying operations experienced by properties in the vicinity of the workings should not normally exceed 55dB L_{Aeq} (1 hour). I am aware that the advice also indicates that in quieter rural areas it may be appropriate to apply a lower daytime limit if the limit of 55dB L_{Aeq} would exceed the existing background levels by more than 10dB(A). In these circumstances, it is indicated that a limit of 45 dB L_{Aeq} (1 hour) should be tolerable to most people living in rural areas.

17. In this case, I note that the council's environmental health officials considered that such a lower limit should apply to 6 of the 8 properties that surround the site. I also note that the environmental health officials have stated that to achieve the noise levels predicted in the appellant's noise consultants report it will be necessary to ensure that: (i) the proposed bunding arrangements which are referred to in the applicant's noise assessment are fully implemented; (ii) lorry movements associated with the development are restricted to the level indicated in the planning application; (iii) that the crusher and screening plants are not brought into operation until the ground level of the weighbridge and plant area reaches 90m AOD; and, (iv) that a planning condition is imposed which requires that the maximum noise level arising from the development that would be experienced at the boundaries of any of the affected properties would be no higher than the levels recommended in PAN 50, Annex A. Provided that all of the above measures are implemented and the required noise limits are complied with, the council's officials have indicated that it would be possible for the quarry to operate within acceptable noise levels. The one accepted exception to the above noise restrictions relates to a period not exceeding 8 weeks each year to enable soil stripping operations to be undertaken on the site. Subject to these provisos, council officials have indicated that there would be no basis for objecting to the development on noise grounds.

18. With respect to the issue of fugitive dust, the work undertaken by the appellant on the matter indicates that existing dust levels in the area are well below the concentration levels which would constitute a problem. The area therefore currently enjoys a relatively high standard of air quality. In these circumstances, for dust to become a material issue in this appeal or to constitute a nuisance the levels of dust and particulates in the area would have to increase markedly as result of the sand and gravel operations. In terms of the present proposals, it was acknowledged by the main parties that the proposed operations had the potential to generate addition dust, through the excavation and movement of sand and gravel within the site, the crushing and grading of materials and the movement of HGVs on the haul road.

19. However, I am aware that the council has agreed that the implementation of a number of dust control measures, such as the spraying of all roadways with water, the use of vehicles with exhausts pointing away from the ground and restrictions on the speed of vehicles within the site, would substantially reduce the risk of dust emissions causing a problem. I note that the appellant's assessment of the impact of fugitive dust at the appeal site indicates that although there may be a small decrease in local air quality due to the proposed works this is likely to be of short duration and should at no time result in any recognised air quality standards being exceeded or cause an increased risk to health. With the implementation of appropriate dust control measures, it was concluded that the impact on the area should be kept to a minimum and that no surrounding properties should be affected by a dust nuisance. The council's environmental health officials have generally

accepted that these findings are reasonable. Therefore, subject to the imposition of planning conditions to require the implementation of the dust control measures referred to above and the provision of a sealed surface on the first 140m section of the quarry access road from its junction with the B977, the council had no objection to the development on the grounds of dust or particulate emissions.

20. Turning to the potential effects of vibration from the site, as this appeal relates to the extraction of sand and gravel there will be no need to undertake blasting as part of the development. Consequently, the single most important source of potential vibration with respect to properties in the vicinity of the extraction area is not an issue in this appeal. Other possible sources of vibration do exist in relation to the operation of the crushing plant and the screen filters on the site. However, I note that the evidence suggests that provided anti-vibration mountings are fitted to such items of plant they should not transmit any more than a minimal amount of vibration to the ground. Consequently, any vibration effects are unlikely to be noticeable at distances greater than a few tens of metres from the actual site of the operating plant. In this case, the closest residential property to the plant area would be significantly further from the crusher and filter plant than this.

21. Another potential source of vibration is the movement of HGVs on the quarry access road. The property that would be most affected by this potential source of vibration would be Drumhead Cottage. In the case of this property, the centre line of the proposed access road would be some 40m from the house. However, as indicated above, vehicles using the section of the access road closest to the property would be travelling along a section of the roadway that has to be surfaced. In these circumstances, I consider that it is unlikely that traffic movements within the workings would have a noticeable vibration impact on this property, provided that conditions are in place to (i) restrict the speed of HGVs using the access road; and, (ii) ensure that the roadway is properly surfaced and maintained. As the proposals at appeal involve the use of access arrangements that require all quarry traffic to enter and exit the site directly from the A90(T), there should be no increase in the number of HGVs that would pass directly in front of Drumhead Cottage as a result of the extraction activity. In these circumstances, there should be no increase in the vibration levels experienced at this property caused by vehicles from the proposed development using the B977. I do not therefore consider that vibration is a significant issue in this appeal and I believe that any potential adverse effects could be satisfactorily addressed through the use of appropriately worded planning conditions.

22. Drawing these matters together, I consider that the potential problems associated with noise, dust and vibration from the extraction of sand and gravel at the appeal site could technically be satisfactorily addressed provided that the development was implemented in accordance with the plans submitted to the planning authority and subject to compliance with the detailed requirements set out by council officials on noise attenuation, vibration prevention and dust suppression. However, I have significant reservations regarding the impact that the development and some of the proposed mitigation measures would have on the visual and residential amenity of a number of properties in the vicinity of the site. This is a matter that I will deal with in more detail below.

23. In terms of the impact of the proposed workings on the landscape and visual amenity of the area, I note that the site is located at an altitude of some 80-85m AOD, which in the context of the local area represents a relatively high point. The scale of the proposed

workings would also be extensive with the area to be extracted measuring some 600m by 380m and with the average depth of the workings being approximately 15m. In my view, the extraction of sand and gravel from the site would by its very nature result in significant changes to the landscape character and appearance of the area, at least during the extraction period and before the restoration works have been completed and the woodland planting matures. As indicated previously, the appeal site is not within an area that is covered by any national or local landscape designation, although the site does lie within 1km of an area identified in the local plan as Undeveloped Coast and some 2km from an Area of Landscape Significance. I also note that the local plan indicates that these designations are intended to protect the better quality landscapes within Aberdeenshire from inappropriate development.

24. In my opinion, the local topography and existing tree belts together with the low ridge that crosses the appeal site would provide partially screening of the proposed extraction area and restrict views of the workings from the south. In addition, the rising ground and various tree belts would limit views into the site from the east. As a result, while the south facing slopes in the appeal site are visible from sections of the B977 and a number of residential properties, this area can only be seen in brief glimpses from vehicles using the A90(T). However, the appeal site is open to direct views from the unclassified public road that runs along its western edge and from the residential properties that lie to the north. These residential properties occupy elevated positions which would directly overlook the proposed extraction area. In terms of the longer distance views, I do not consider that the proposed mineral workings at the appeal site would be prominent or clearly visible from many sensitive locations. The area where it is intended to locate the proposed items of plant would be visible in distant views from certain points on the sand dunes at Balmedie, but in general terms the local topography assists in screening the site from most views across the wider area.

25. In terms of visual impact, I consider that the proposed development would inevitably have a significant effect on what is presently a relatively undisturbed and peaceful agricultural area. I appreciate that an advanced scheme of woodland planting is proposed in an attempt to screen the working area and minimise the visibility of the haul road. However, I do not consider that these measures would necessarily be effective in the short term (i.e. for the first 5 years). Furthermore, I do not believe that the proposed planting would screen the working area or reduce the visual impact of the development on the residential properties which lie to the north of the site, i.e. Greenden (some 180m from the site), Damhead of Orrock (some 260m away) and Graylings (some 300m away). As indicated above, these properties occupy elevated positions overlooking the proposed mineral workings. Because of the nature of the landform with falling ground between these houses and the appeal site, it is not practical to either create bunds or provide landscape planting that would provide effective screening of the mineral workings from these properties. I note that this situation is acknowledged in the landscape assessment produced by the appellant where the visual impact of the development, taking into account the proposed mitigation measures, was considered to be 'major adverse' at Greenden and Damhead and 'moderate adverse' at Graylings. With respect to these properties, I consider that the proposed mineral workings would have a substantial detrimental impact on the appearance and rural character of their immediate surroundings. I also consider that this detrimental impact would result in the level of residential and visual amenity currently enjoyed by these houses being adversely affected to a significant degree.



26. The impact of the proposals on Drumhead Cottage also requires to be considered. In the case of this property, the extraction area would be some 600m to the north of the cottage and because of the intervening hill slope and the proposed earth bund the house would not have any direct views into the operational area. However, the proposed haul road to the workings would be located only some 35-40 metres to the east of the cottage. In an effort to mitigate the visual impact of the vehicles using the access road to the quarry and to address the issue of the noise impact of the development on the property, the application, as submitted to the council, includes a proposal to erect a 5m high bund close to the eastern and northern boundaries of the garden of the cottage. Although this bund may be effective in terms of reducing the noise associated with the development and act as a visual barrier that screens views of the haul road, I consider that the proposed structure would have an oppressive and overbearing effect on the house. In my opinion, the proposed bund would also have a significant adverse effect on the residential and visual amenity of Drumhead Cottage. I therefore find that the bund would constitute an entirely inappropriate and unacceptable form of noise and visual mitigation.

27. I appreciate that at the inquiry the appellant put forward alternative solutions to the 5m high bund at Drumhead Cottage to deal with the issues of noise and visual impact. The alternatives solutions suggested would involve the provision of either a lower bund (some 2.5m high with a 2m fence on top) or the provision of a 2m high acoustic barrier in the form of a 300mm thick solid wall. However, neither of these alternative proposals formed part of the application that was submitted to the council for approval. In my opinion, the revised proposals would significantly change the submitted scheme and I do not believe that the amendments constitute minor or non-material variations to the application. I consider that the suggested changes would materially alter the appearance of the development for which planning permission was sought and significantly change the character of the mitigation measures proposed. In my view, the mitigation measures proposed for Drumhead Cottage in the submitted application form a key part of the overall development. In addition, they provided the basis on which council officials assessed the acceptability or otherwise of the scheme in terms of its impact on that property. I also note that in order to achieve the noise levels sought by the council at the cottage and other properties, as well as mitigating the visual impact of the haul road to an acceptable level, it has been assumed that the bund would be built as originally proposed.

28. I am also aware that the amended proposals have not been subject to any statutory notification and consultation procedures with neighbouring interests or other consultees. In addition, the council's environmental health officials have not had the opportunity to formally comment on the alternative schemes or to indicate whether they would provide the required level of mitigation for noise and visual impact at the cottage. In determining this appeal, I do not therefore believe that it is appropriate to consider revised mitigation proposals which are substantially different to those that were before the council and which in turn may raise new issues relating to their effectiveness in dealing with the noise and visual impact of the development on Drumhead Cottage.

29. In relation to the effectiveness of the alternative forms of mitigation, I note that revised measurements were submitted to the inquiry relating to the existing background noise levels experienced at Drumhead Cottage and the noise levels generated by HGVs using the haul road at Ardlethen Quarry, Ellon. The revised figures produced by the

appellant's consultant were intended to demonstrate that it would be possible to achieve the council's required noise level of 45dB(A) at Drumhead Cottage using a lower bund or an acoustic barrier provided. I consider that once again this would represent a material change in the position previously agreed with the council, which was based on the standards set out in BS 5228 regarding noise and vibration at construction and open sites.

30. I also have reservations regarding the use of the revised figures suggested by the appellant. With respect to the average and background noise levels at Drumhead Cottage, I note that the measurements were undertaken on a Friday afternoon between 15.00 and 16.00 hours and between 16.35 and 17.35 hours. The time at which these measurements were taken is generally acknowledged as constituting one of the busiest periods of the week for traffic movements. In these circumstances, I do not believe that the revised figures for the average and background noise levels at the cottage can necessarily be taken to be representative of the average or background noise levels at this property. Secondly, I do not consider that it is correct to assume that the noise levels associated with the HGVs using the haul road at South Orrock would necessarily be the same as those at Ardlethen. Having visited the site at Ardlethen, I consider that the local topography, site specific conditions, background noise levels and the amount of traffic on adjacent public roads are quite different to the situation at the appeal site.

31. Taking all the above matters into account, I do not consider that it is appropriate for materially different mitigation proposals to be introduced at this late stage in the process. In my view, if it the appellant intended to put forward significant changes to the proposed development this matter should have been raised with the council in the first instance to see whether the alterations made the scheme acceptable to the planning authority and not introduced at the appeal stage. I am also concerned that the alternative schemes have not been subject to the same level of scrutiny by the council's environmental health officials as the proposals in the original application. In addition, on the basis of the evidence before me, I am not persuaded that the revised measures proposed would necessarily be as effective or satisfy the council's requirements relating to noise levels and visual intrusion. While it may be acceptable in certain circumstances for councils to allow variations to be made to planning applications prior to their determination by the planning authority, I do not believe that this would be an appropriate course of action in this appeal.

32. In terms of Policy Env/13, as indicated above, I consider that with respect to the third criterion it would be possible technically to satisfactorily address the issues associated with noise, dust and vibration arising from the proposed mineral workings provided that the development was undertaken strictly in accordance with the plans considered by the planning authority. It would also be necessary for the development to be operated in compliance with a number of conditions designed to ensure that the noise levels at affected properties would accord with the council's requirements and that satisfactory measures are in place to deal with dust suppression and vibration reduction. However, I consider that the impact of the proposed mitigation measures relative to Drumhead Cottage would be obtrusive and unacceptable because of the impact that they would have on the residential and visual amenity of that property. In addition, I consider that the proposed mineral workings would have a significant detrimental impact on the appearance and rural character of the immediate surroundings of the residential properties at Greenden, Damhead and Graylings and that this, together with a certain increase in background noise, would result in the level of residential and visual amenity currently enjoyed by these houses being

adversely affected to a significant and unacceptable degree. While I appreciate that the mineral workings would be restricted to a period of some 10 years and that such operations inevitable have some impact on the environment, I believe that the detrimental effect of the operations on the amenity of these properties, particularly at Greenden and Damhead, even for a limited period would be unacceptable. In these circumstances, I find that the proposed development would not be consistent with the requirements of Policy Env\13 which states that mineral developments should not have any significant adverse effect on the amenity of residents living near a site.

33. Reference has also been made to Policy Gen\1, which is designed to promote more sustainable forms of development. I note that it has been argued that the proposed mineral workings could lead to a reduction in the haul distances travelled by HGVs carrying sand and gravel to construction sites and that the development would therefore assist in saving energy. As indicated previously, I consider that this factor has to be balanced against the impact of proposals on the environment. I also accept that the development would be consistent with a number of the criteria contained in this policy. However, for the reasons set out above in relation to Policy Env\13, I do not consider that the proposals would satisfy the criterion regarding the need for developments to avoid impacting negatively on the character and amenity of the surrounding area. I therefore consider that the development at appeal would not satisfy all of the relevant provisions in Policy Gen\1.

34. Turning to Policy Env\18, this requires that listed buildings should be protected from any development or works that would have a detrimental effect on the character or integrity of listed structures or their settings. In this case, the Category 'A' listed Orrock House and the Category 'B' listed doocot are located to the north east of the appeal site. The application, as originally submitted, included an area of land directly to the south of the doocot that was to be used for the storage of overburden from the sand and gravel workings. I am aware that Historic Scotland's Listed Buildings Inspectorate initially indicated that the creation of a spoil heap on this land would have an adverse effect on the visual relationship between Orrock House and the doocot. As a result of these concerns, the appellant gave further consideration to the extent of the proposed development area and subsequently indicated that it was no longer necessary to use the land to the south of the doocot for storage purposes. This area of ground was therefore excluded from the application and does not form part of the appeal site. I also note that advanced woodland planting and a scheme of landscape reinstatement are proposed which should assist in mitigating the visual impact of the workings on the listed buildings. Historic Scotland has subsequently indicated that it would not object to the proposals provided that the area to the south of the doocot no longer forms part of the application site and that the proposed landscape measures are covered by appropriately worded planning conditions. Taking the above matters into account, I consider that the application, as amended, would be unlikely to have a material adverse effect on the listed buildings or their settings. The appeal proposals would therefore be consistent with the provisions of Policy Env\18 in the local plan.

35. With respect to the impact of the proposed development on the road system in the area, Policy Inf\1 indicates *inter alia* that a new access to serve a development will be acceptable in principle provided that: (i) it is safe and convenient for all road users, is resource efficient and, causes minimal impact to the character of the site and the surrounding area; and, (ii) a Transport Assessment demonstrates that the development and

any necessary mitigation measures will not have a significant transport impact on the existing infrastructure or services. I note that in this case it is proposed to access the proposed sand and gravel workings through the formation of a new private access road linking the site with the B977 Balmedie to Belhelvie road, which would in turn provide access directly to a junction on the A90(T). I am aware that the appellant has indicated that the location of the junction of the access road with the B977 has been specifically chosen to avoid quarry traffic passing Drumhead Cottage on its way to the A90. Furthermore, the location of the access road was chosen so that it would be sufficiently far from the cottage to allow for the construction of the sound attenuation bund.

36. I also note that for the purposes of the transport assessment it has been stated that the proposed development would generate on average some 90 lorry movements each working day. This is equivalent to approximately 10 lorry movements to and from the site every hour during the working day, i.e. on average 5 lorries would arrive and 5 lorries would leave the site each hour. It has been indicated by the appellant that in the first hour or so of operations each day the number of HGV movements may be double the above average figure. It has also been indicated that the existing traffic volume using the B977 during the daily peak periods is approximately 400 vehicles per hour. On the basis of these figures the traffic generated by the development would lead to an increase of some 2.5% in the number of vehicles using the B977 during the peak periods, albeit that all the vehicles involved in this increase would be HGVs.

37. In terms of the impact of the development on local roads, the council's Transport and Infrastructure Service has indicated that provided the access and egress from the site were made from the B977 directly to the A90(T), with no vehicular access being permitted from the direction of Belhelvie, the development would be acceptable in principle. In addition, roads officials have indicated that it will be necessary for the developer to undertake a number of works to the local roads system. The improvements required by the council include: the widening of the section of the B977 from the A90(T) to the quarry access road to a minimum width of 7.3m; the provision of a 2m wide verge on the north side of the widened B977 and a 1m wide verge on its south side to safeguard pedestrian safety; the provision of forward visibility splays in both directions of 150m by 3m at the junction of the quarry access road with the B977; and, the provision of additional street lighting. It has been indicated that provided these improvements were carried out the council would have no objection to the proposed development on the grounds of its impact on local roads.

38. In terms of the impact of proposed development on the A90 trunk road, the Scottish Government's Trunk Road Network Management Division (TRNMD) has indicated that in order to accommodate the additional lorry movements it would be necessary for the junction between the B977 and the A90 to be improved to minimise interference with the safety and free flow of traffic on the trunk road. Revised drawings showing the required road improvements, which involve the provision of a diverge taper and a merge taper at the A90(T)/B977 junction, have subsequently submitted to TRNMD who have confirmed that the layout proposed is satisfactory and would meet their requirements. Therefore, provided that the junction improvements to the A90(T) are constructed in accordance with the submitted drawings prior to the commencement of any development, there would be no objection to the proposals on trunk roads grounds.

39. I appreciate that the issue of increased traffic generation from the development and the resultant impact on the local road system, the A90 trunk road and on properties neighbouring the appeal site were key concerns expressed by a large number of local objectors to the proposed sand and gravel workings. However, the technical evidence of the council's road engineers and those of the Scottish Government was that the level of traffic generated by the development could be satisfactorily accommodated without any material increase in the risk to road safety in the area provided that certain alterations were made to the B977 and its junctions with the quarry access and the A90(T). In addition, the proposals as submitted would not allow any traffic going to or leaving the quarry to travel westwards on the B977 and thus through Belhelvie or any other settlements on that route. I am aware that the issue of the impact of the development specifically on Drumhead Cottage was also a matter that was raised by a number of objectors. I have dealt with this issue above. Drawing together the above matters, I consider that the proposed development as set out in the application considered by the council would be unlikely to have any significant detrimental effect on the local road network or the A90 trunk road. As such, I believe that the submitted proposals would satisfy the requirements of Policy INF1 in the local plan.

40. At the inquiry, the issue of the possible implications for the development of the proposed upgrading to dual carriageway of the section of the A90 from Balmedie northwards to Tippetry was raised. The draft Road Orders for the upgrading of this section of the A90 were published in October 2007 when it was indicated that any objections to the proposals should be submitted by the end of November 2007. With respect to the present appeal, the implications of the improvements to the A90 are that the section of the B977 from Drumhead Cottage to the A90 and the existing junction on the A90 would be closed off. As a result, a new realigned section of the B977 would have to be constructed to link the remaining part of this road to a new grade separated junction on the A90 located to the south of Balmedie. Consequently, if the road improvements as set out in the draft Road Orders are implemented, it would no longer be possible to provide direct access to the sand and gravel workings from the existing junction on the A90. In these circumstances, it has been suggested that all traffic approaching or leaving the appeal site would require to use the B977 and to pass Drumhead Cottage and other properties in the area. Such a change is clearly not consistent with the access arrangements proposed in the planning application that is the subject of this appeal and which formed the basis on which the council's officials accepted the development on roads grounds. As indicated above, the original access arrangements were designed specifically to route vehicles from the quarry directly to the nearby junction of the B977 with the A90 and thus ensure that no HGVs passed directly in front of Drumhead Cottage or were able to pass through the villages of Belhelvie and Potterton.

41. While there is no set date for the start of construction of the A90 improvements, it was generally anticipated that the scheme would proceed with a projected start date of 2012 or 2013. The estimated life of the quarry is stated to be 10 years and even with a start date for extraction of 2009 the sand and gravel operations would continue until 2018 or 2019. Under these circumstances, it would appear likely that for at least 4 or 5 years the access arrangements proposed in the planning application and approved by the council's road engineers would be incapable of operating as planned. I appreciate that the appellant has submitted that the junction of the quarry access road could be adjusted to allow traffic to turn west along the B977 to the new section of road linking it to the proposed grade separated junction on the A90. However, I believe that the introduction of any such



radically revised access arrangements would represent a material change to the proposals contained in the planning application considered by the council. I note that no detailed consultations have been undertaken with the council, local residents or other interest parties on such alternative access arrangements. Consequently, at this time I do not consider that it is appropriate to assume that alternative access proposals using the B977 and the new link road or another route would necessarily be acceptable.

42. In these circumstances, I believe that the appeal has to be determined on the basis of the access arrangements that were contained in the planning application considered by the council. In the event that improvements to the A90 require that the B977 junction at Drumhead is closed off, revised access arrangements would have to be prepared and submitted to the council for approval prior to the closure of this road. This may involve the submission of a new planning application to address the changed situation. Given this situation, I consider that any planning permission which might be granted at this time would have to relate solely to the access arrangements agreed with the council. This leaves doubts over what the situation would be in relation to the continued extraction of sand and gravel from the site if the B977 is closed.

43. Policies Inf4a and Inf4b deal with the issues relating to drainage standards, surface water drainage and the provision of sustainable urban drainage systems. I note that SEPA was initially concerned that insufficient information had been provided to indicate the likely environmental impacts of the proposals or to identify proposed control measures. Particular concerns were raised regarding the effect the development might have on the hydrology of the area. SEPA therefore lodged an objection to the proposed development until further information was provided on matters such as surface water runoff, the potential contamination of a nearby watercourse, the implications of the extraction activity on the area's water table, the arrangements for the treatment of foul drainage and restoration proposals for the site. The appellant has provided additional information to address the above issues and I am aware that SEPA has indicated that it accepts the findings and acknowledges that its initial concerns can be satisfactorily resolved. SEPA therefore no longer objects to the proposed development, subject to planning conditions being imposed which would cover a number of detailed operational matters. In these circumstances, the development would be consistent with the requirements of Policies Inf4a and 4b in the local plan provided that it is undertaken in accordance with the detailed information supplied by the appellant and agreed by SEPA.

44. Drawing together all the above conclusions relating to the development plan position, I find that the appeal site is in an area that is recognised as being less sensitive in terms of habitats, species and landscape quality and that it is therefore within a preferred location for mineral extraction. In addition, the proposals would be consistent with certain other policies in the structure and local plans regarding road access, water and drainage as well as the conservation of listed buildings. It would also be possible technically to undertake mitigation measures to reduce the impact of noise, dust and vibration from the site to levels that would be acceptable to the council. However, I consider that the measures proposed to deal with noise and visual impact would in turn have an unacceptable adverse effect on the residential amenity of Drumhead Cottage. I also believe that the development would have a significant detrimental effect on the residential and visual amenity of a number of residential properties to the north of the site. Consequently, I find that the proposals would not satisfy the terms of Policy Env\13 in the local plan, which requires that proposals for the

extraction of minerals should not have any significant adverse effect on the amenity of residents living near the site. For similar reasons, I also consider that the development fails to satisfy all of the criteria in Policy Gen\1 in the local plan. In these circumstances, I conclude that the proposed development would not be consistent with the relevant provisions of the development plan.

Other material considerations

45. While I have found that the proposal would not be consistent with the provisions of the development plan, the Act also requires that I must take account of any other material considerations that are relevant to the planning merits of the case. With respect to these other considerations, I believe that the most relevant to the determination of this appeal are the provisions of national planning policy and guidance.

46. Dealing firstly with Scottish Planning Policy 2 (SPP2): Economic Development, this in general terms encourages the planning system to make provision for the promotion of development opportunities provided that they do not have any significant detrimental environmental impacts. In this case, I acknowledge that the proposals may lead to some limited employment benefits and would not have a significant detrimental impact on any sites of importance for nature conservation or the built heritage. However, as indicated above, I consider that the proposals would have a detrimental effect on the residential and visual amenity of a number of properties in the vicinity of the proposed workings. In these circumstances, I do not believe that the provisions of SPP2 provide support for the development.

47. Similarly, while SPP4: Planning for Minerals recognises the importance of mineral extraction to the Scottish economy and the development industry and promotes a positive approach to mineral extraction; it also recognises that the benefits of mineral developments should not be obtained at the expenses of unacceptable impacts on adjacent residential properties or the environment. The SPP goes on to indicate that mineral extraction should only take place where such impacts can be made acceptable. For the reasons set out previously, I do not consider that this would be the case in the present appeal. Reference is also made to the issue of continuity of supply with the indication that there is a need to provide for a minimum of a 10-year supply of construction aggregates within the appropriate market area. As indicated previously, I do not believe that it has been demonstrated that there is or is likely to be a shortfall in the 10-year supply of sand and gravel in Aberdeen and the surrounding area.

48. SPP4 also raises the issue of cumulative impact. The guidance indicates that planning authorities should ensure that proposals for new development will not lead to a disproportionate burden of negative environmental impacts on settlements. It goes on to indicate that this will be particularly important if there are already 2 or more operational or consented mineral, opencast coal or landfill sites within 5km of any nearby community. I note that the assessment of cumulative impact should consider matters such as site design, likely increases in road traffic, the intensity and length of any disturbance to communities and the level and duration of any impact on the landscape.

49. I am aware that the council has expressed concern that the proposed mineral extraction at South Orrock would contribute to the cumulative impact of such developments

within the local area. However, while I appreciate the council's concerns regarding the proliferation of such developments in the general area, I believe that because of the topography of the area around the appeal site the impact of the proposed sand and gravel workings on the landscape and nearby settlements would be largely localised. The main adverse impacts of the extraction operations would be limited in my view to the properties surrounding the site and not on the main settlements in the area. Similarly, as indicated previously, provided that access to and egress from the site for HGVs was made directly to the adjacent junction of the B977 with the A90(T), the effects of the additional traffic movements on the local road network would be minimal. Furthermore, while I acknowledge that there are a number of landfill sites and other mineral operations within 5km of the appeal site, I am not persuaded that the proposed sand and gravel workings at South Orrock would materially increase the cumulative impact of such developments on the wider area.

50. I note that in support of the appellant's case it was indicated that there were no objections to the proposed development from a number of national agencies including Scottish Natural Heritage, Historic Scotland, SEPA and TRNMD. Although these agencies may have had no objection to the proposal with respect to their particular interests, they do not have responsibility for considering the impact of the mineral development on the general amenity of the area. The responsibility for such matters remains with the planning authority which has to balance the various competing interests and come to a view on the acceptability or otherwise of a proposal in amenity terms. Despite the fact that a number of the consultees may have had no objection to the development, it is my view that the proposal would have a significant adverse and unacceptable effect on the residential and visual amenity of a number of the properties in the vicinity of the site. This was an issue that was raised by a large number of objectors to the application.

Conclusion

51. Section 25 of the Act requires the determination in this appeal to be made in accordance with the provisions of the development plan unless material considerations indicate otherwise. For the reasons set out above, I find that the development would not be consistent with the provisions of the development plan and that there are no other material considerations which would justify exceptional treatment. I have taken account of all the other matters raised but find none that outweigh the considerations on which my decision is based. I therefore dismiss the appeal.

52. A separate letter dealing with the claim for an award of expenses made by the appellant against Aberdeenshire Council will be issued in due course.

Iain G. Lumden

IAIN G LUMSDEN
Reporter

Directorate for Planning and Environmental Appeals
Claim for an Award of Expenses Decision Notice

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Decision by Iain G Lumsden, a Reporter appointed by the Scottish Ministers

- Appeal reference: P/PPA/110/699
- Site address: Land at South Orrock, Balmedie, Aberdeenshire, AB23 8XY
- Claim for expenses by RMB Developments Ltd against Aberdeenshire Council
- Date of inquiry: 17-19 June 2008

Date of decision: 29 January 2009

Decision

I find that the council has not acted in an unreasonable manner resulting in liability for expenses and, in exercise of the powers delegated to me, I decline to make any award.

Reasoning

1. Awards of expenses do not follow decisions on planning merits, and are made only where each of the following tests is met:

- the claim is made at the appropriate stage in the proceedings;
- the party against whom the claim is made has acted unreasonably; and, if so,
- such unreasonable conduct has caused the party making the application unnecessary expense, either because it was unnecessary for the matter to come before the Scottish Ministers, or because of the way in which the party against whom the claim is made has conducted its side of the case.

2. In this case the claim was made at an appropriate stage of the proceedings, before the public inquiry was concluded.

3. Dealing with the merits of the claim, I note that the appellant has acknowledged that the planning authority is entitled to refuse an application contrary to the recommendation of its professional officials. However, it has been emphasised that in so doing the planning authority must reach its decision on the basis of proper planning reasons and be able to demonstrate that this is the case. In the appellant's opinion, 3 out of the 5 reasons for refusal referred in the decision notice failed to meet these tests. As a consequence, it was



considered that the council had acted unreasonably and that this behaviour had caused the appellant to incur unnecessary additional costs in pursuing the appeal.

4. In relation to the second reason for refusal, the appellant has submitted that the council was incorrect in concluding that there was insufficient evidence available regarding the demand and supply of minerals in the area. Information had been provided by the appellant in support of the application which indicated that there was a significant shortfall in the 10 year minimum supply of sand and gravel reserves. Furthermore, council officials had not raised any detailed concerns regarding this matter or provided an alternative view of the situation. In these circumstances, it was considered that the council had no good reason to conclude that there was insufficient evidence in relation to the requirements of Policy 24 (Minerals) in the structure plan.

5. In my view, the evidence that the appellant made available to the council at the time the application was being determined with respect to this matter was less than conclusive. I acknowledge that this is an issue on which it is difficult to obtain all the relevant information and that there are varying interpretations of what constitutes the most appropriate approach to the matter. However, I do not consider that the level of information provided in support of the application or indeed the subsequent revised information put forward at the inquiry demonstrate that there is a shortfall in the minimum 10-year land supply. I am also aware that planning officials in their report to committee on the application concluded that they were unable to assess whether or not the proposal was in line with the maintenance of an adequate land bank. In these circumstances, I consider that the council was justified in coming to the view that the applicant had not demonstrated to its satisfaction that there was shortage of sand and gravel reserves in the area. Given that the question of the need for the mineral workings forms an integral part of any planning assessment under Policy 24, I find that the council was entitled to make reference to these outstanding doubts in its reasons for refusal. In addition, I consider that this reason for refusal is sufficiently complete and precise to make the appellant aware of the councils concerns on the matter. In any event, in determining the appeal it was necessary for me to have parties' views on the matter in order that I could come to an informed decision on the land supply issue.

6. Turning to the third reason for refusal, the appellant has submitted that the uncertainties regarding the planned upgrade of the A90(T) and the potential implications that these could have for the appeal proposals did not warrant the council coming to the view that the approval of the application would be premature. As a result, it was submitted that the council's concerns on the matter did not amount to a sound reason for refusal. On this point, it is my view that the implications of the proposed realignment of the A90 on the access arrangements for the quarry had not been fully considered at the time the application was being considered by the council. Given that the access arrangements agreed with the council's roads officials were entirely dependent on the use of the existing junction on the A90 and that these would be rendered inoperable if the upgrading scheme proceeds, I believe that this is a genuine matter of concern which required further consideration before planning permission was granted. The issue is given greater relevance by the fact that for a significant portion of the projected lifetime of the quarry no detailed proposals have been submitted to or agreed by the council regarding alternative access arrangements. In this context, I find that the council's concerns relative to the



uncertainty over the potential implications of the A90 realignment for the appeal proposals was justified and merited a reference in the reasons for refusal.

7. Lastly, the council's fifth reason for refusal makes reference to the failure to properly consult the local community on the application in terms of the advice contained in PAN 81. It was submitted that this was a clear cut example of an unsound reason for refusal. It was indicated that PAN 81 was issued some 2 years after the application had been submitted and only a month before the committee determined the case. It was therefore considered unreasonable for the council to find that the appellant's actions amounted to a breach of government guidance and advice or to use this matter as a reason for refusal.

8. On this matter, I would accept that the appellant could not be expected to comply with guidance on public consultations issued after the application was determined by the council. However, although the wording of the condition may not be appropriate, the underlying point that it would appear that there was little engagement with the local community on the proposals either before the application was submitted or during its processing by the council would seem to me to be valid. The need to give consideration to the implications of mineral extraction on those living close to a site has long been recognised and was included in previous government guidance on the matter (NPPG 4 Land for Mineral Working) and current best practice as set out in PAN 50. Furthermore, I note that in the period running up to the inquiry a number of changes to the scheme were suggested to try to address concerns raised by local objectors. As indicated in the decision notice on the appeal, I consider that many of the proposed amendments should have been brought forward at an earlier stage in the process. Drawing these matters together, I find that the specific reference to PAN 81 was incorrect and that this reason for refusal was therefore lacking in precision. However, I do not believe that the reference to a lack of engagement with the local community has raised any significant new matters that would not have had to be considered in any event in addressing the detailed concerns of the local residents regarding the environmental impact of the quarry operations and the haul road.

9. In conclusion, with respect to the second and third reasons for refusal, I find that the council has provided clear and justifiable planning reasons for its decision. The council has not therefore acted in an unreasonable way with respect to these matters. In terms of the fifth reason for refusal, I consider the reference to PAN 81 was incorrect and lacking in precision and that in this respect the council's behaviour could be considered to be unreasonable. However, I do not believe that the council's behaviour on this matter has resulted in the appellant incurring any unnecessary additional expenses in pursuing the appeal.

10. I have taken account of all other matters raised in the submissions regarding this claim. but they do not lead me to alter my conclusions.



IAIN G LUMSDEN
Reporter