

IT'S ONLY ROCKS N SOIL, BUT  
I LIKE IT



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## Background

1. In the high octane and fashionable world of town and country planning, for some reason, minerals is frequently the last one asked to dance. This note follows the recent podcast and examines the current planning regime around minerals, challenges and opportunities in the sector, and the specific issue of mineral safeguarding.

## What are minerals?

2. The NPPF defines minerals resources of local and national importance as follows:

*Minerals which are necessary to meet society's needs, including aggregates, brickclay (especially Etruria Marl and fireclay), silica sand (including high grade silica sands), cement raw materials, gypsum, salt, fluorspar, shallow and deep-mined coal, oil and gas (including conventional and unconventional hydrocarbons), tungsten, kaolin, ball clay, potash, polyhalite and local minerals of importance to heritage assets and local distinctiveness.*

3. Those minerals are essential in the construction industry and in the production of other vital products – glass, iron and steel, food, ceramics, pharmaceuticals.

## Why minerals matter

4. That minerals is not a more intense focus of planners is odd when one looks at the importance the minerals industry plays in the UK economy. It is inevitable that minerals will play a key role in the economic recovery from Covid-19.

5. Some key facts and figures on the value of minerals to UK plc:

5.1. £18bn – annual turnover for the Minerals and Minerals Products Industry.

5.2. £6.8bn – GVA generated by the industry.

- 5.3. 74,000 – people employed in the industry.
  - 5.4. 3.5m – jobs supported in our supply chain.
  - 5.5. 1920 – active sites and plants in 2018.
6. With such high value to the economy, the minerals industry will be at the heart of economic recovery. Both for the value it brings in its own right and the importance minerals play in other sectors, particularly construction.

### **What does the NPPF say about Minerals?**

7. Minerals must be important as it has its own section of the NPPF, chapter 17. Key points from that:
- 7.1. Recognises the importance of a sufficient supply of minerals for the infrastructure, buildings, energy and goods that the country needs.
  - 7.2. Really key that minerals can only be worked where they are found and so planning must secure their long-term conservation.
  - 7.3. Sets out requirements for local minerals policies: provide for extraction; consider substitute, recycled and waste materials; define Minerals Safeguarding Areas (more on those later); prior extraction of minerals; processing; criteria or requirements to ensure operations don't have unacceptable adverse impacts on the natural and historic environment or human health; noise; reclamation of worked land.
  - 7.4. Key points for decision making: great weight to the benefit of extraction; no unacceptable adverse impacts on the natural and historic environment, human health or aviation safety; ensure that any unavoidable noise, dust and particle emissions and any blasting vibrations are controlled, mitigated or

removed at source<sup>1</sup>; not grant permission for peat extraction; restoration and aftercare.

- 7.5. For decision making, a policy of particular importance, NPPF §206:

*Local planning authorities should not normally permit other development proposals in Mineral Safeguarding Areas if it might constrain potential future use for mineral working.*

- 7.6. Policies requiring LPAs to plan for a steady and adequate supply of minerals, including an annual assessment of aggregates and forecast of future demand, and ensuring supply through cross-boundary cooperation and maintaining appropriate aggregate landbanks or stocks of permitted reserves at individual sites for industrial minerals.

- 7.7. Specific policies relating to oil, gas and coal exploration and extraction.

### **How are these policies applied?**

8. In terms of safeguarding, the NPPF seems clear, permission shouldn't normally be granted if it might constrain potential future use for mineral working (NPPF§206). In some cases this is applied – see Land at Goodamoor Farm appeal decision<sup>2</sup>. But it is not always the case and particularly in areas which are significantly constrained by safeguarding areas – see Land off Western Road, Essex appeal<sup>3</sup>.
9. Part of the decision making process is dependent upon the MPA picking up the impact on a Minerals Safeguarding Area in the application. This is not always done and developers must be wary of this – see Silver Trees Farm, Westmoor Lane<sup>4</sup>.

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<sup>1</sup> Except for coal.

<sup>2</sup> APP/K1128/C/17/3184427

<sup>3</sup> APP/Z1510/W/16/3146968

<sup>4</sup> APP/N2535/W/18/3201624

10. Frequently proposed minerals sites are in the Green Belt (see for example the Supreme Court judgment in *Samuel Smith v North Yorks CC* [2020] UKSC 3). Minerals extraction is considered to be not inappropriate development in the GB, provided it preserves openness and does not conflict with the purposes of the GB. However, that does not mean that landscape impacts need not be considered (see *R. (on the application of Lee Valley Regional Park Authority) v Epping Forest DC* [2016] EWCA Civ 404 at [26]).

### **What are the key challenges and opportunities facing the sector?**

11. Climate Change remains a key challenge. The judgment in *HJ Banks and Co Ltd v SoSHCLG* [2018] EWHC 3141 (Admin) considers how climate change should be considered in determining applications for new coal mines. The Secretary of State, disagreeing with the LMA and his inspector, The secretary of state concluded that the national, local and community benefits of the proposal would not clearly outweigh the likely adverse impacts. He determined that overall the scheme would have an adverse effect on greenhouse gas emissions and climate change of very substantial significance, to which he gave very considerable weight in the planning balance. The test in NPPF §149 was that “Permission should not be given for the extraction of coal unless the proposal is environmentally acceptable, or can be made so by planning conditions or obligations; or if not, it provides national, local or community benefits which clearly outweigh the likely impacts to justify the grant of planning permission”.
12. The wording has since evolved in the current NPPF, but the elements of the test remain the same:
  211. Planning permission should not be granted for the extraction of coal unless:
    - a) the proposal is environmentally acceptable, or can be made so by planning conditions or obligations; or

b) if it is not environmentally acceptable, then it provides national, local or community benefits which clearly outweigh its likely impacts (taking all relevant matters into account, including any residual environmental impacts).

13. Of relevance from the judgment of Ouseley J:

13.1. However the test is applied, there should be no double counting of harms and benefits.

13.2. The policy does not permit all the harm to be considered at stage 2, with only part of the benefits.

13.3. The secretary of state had explicitly accepted all of the inspector's conclusions, including that there was a need for the coal to meet the UK's energy needs, and that the mine would result in savings in greenhouse gas emissions compared to the burning of imported coal. In light of those findings, he should have explained how a proposal needed for the country's energy could be refused on the basis of the adverse impact of greenhouse gases, unless the gap was filled by renewables or low carbon sources.

14. There is also much to be done to properly communicate the less obvious benefits of minerals. This includes the potential of biodiversity net gain to be delivered through minerals sites. As the need to deliver BNG comes online, those bring forward sites should not miss out the on the potential opportunities for this to be delivered on nearby minerals sites. For a more detailed guide of BNG see the excellent note produced by Jonathan Easton and Constanze Bell from Kings - <https://lawinthetimeofcorona.wordpress.com/2020/05/22/have-a-break-and-read-the-no-nonsense-guide-to-biodiversity-net-gain/>.

15. Finally, those bringing forward schemes should think about the pre-working of any minerals that are found on site, potentially including the use of those minerals in the subsequent development.

16. The MPA recently published a short document setting out some of the reforms they think are key to ensuring that minerals can continue to play an integral part in the national economy -

[https://mineralproducts.org/documents/MPA\\_Planning\\_for\\_the\\_future\\_Jun2020.pdf](https://mineralproducts.org/documents/MPA_Planning_for_the_future_Jun2020.pdf)

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