

SGC Suggested Modifications Comments Form 2016 for PSP Plan

**Completed by Churchend Environment Preservation Group
Jan 2017**

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| Your Details | _____ |
| Reference No (if known*): | _____ |
| Title: Mr / Mrs / Miss / Ms / Dr / Other: Details of correspondents are provided in the body of the text below. | Title: Mr / Mrs / Miss / Ms / Dr / Other: |
| Surname: Details of correspondents are provided in the body of the text below. | Surname: |
| Forename: Details of correspondents are provided in the body of the text below. | Forename: |
| Organisation / Company: Churchend Environment Preservation Group | _____ |
| Address: Details of correspondents are provided in the body of the text below. | Address: |
| Postcode: | Postcode: |
| Contact No: Details of correspondents are provided in the body of the text below. | Contact No: |
| Email: [REDACTED] | Email: |

*If you have been contacted by post, you will find your reference number at the top of the letter under 'Our Ref'

PART TWO - YOUR COMMENTS

Please use a separate form for each comment made.

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| Q1. To which suggested modifications does this comment relate? | |
| Suggested Modification - Policy Reference: (e.g. SM14) | PSP23 Paras 6.91 to 6.95 |
| Suggested Modification Local Green Space Reference: (e.g. LGS1234) | |
| Suggested Modification – Policy Map Reference: (e.g. MAP14) | |

For guidance on 'legal compliance' and 'soundness' please see the guidance note available from www.southglos.gov.uk/PSPsubmission.

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| Q2a. Do you consider the suggested modification is legally compliant |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| Q2b. Do you consider the suggested modification is sound? |
| <input type="checkbox"/> Yes <input type="checkbox"/> Yes, with minor changes <input checked="" type="checkbox"/> No |

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| Q3. On what grounds do you consider the modification is <u>unsound</u>? Is it because it is <u>not</u>: |
| <input type="checkbox"/> Positively Prepared? x |
| <input type="checkbox"/> Justified? x |
| <input type="checkbox"/> Effective? x |
| <input type="checkbox"/> Consistent with National Policy? x |

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| Q4. Please set out what change(s) you consider necessary to make the suggested modification legally compliant or sound. Please be as precise as possible. |
| Your suggested change should have regard to the test you have identified at Q3 above where this relates to soundness. You should state why this change will make the Policies, Sites and Places Plan legally compliant or sound. It will be helpful if you are able to put forward your suggested revised wording of any policy or text. |
| <p>We wish the contents of our previous letter to be considered by the Inspector in relation to PSP23 and in particular to sub paras 6.91 to 6.95. In this letter we questioned whether the process SGC followed in designating the area had been <i>legally compliant</i> and <i>sound</i> and the continued inclusion of the area as drafted in the PSP Plan have not removed these concerns.</p> <p>The letter is therefore re-submitted for formal submission to the Inspector as it continues to be relevant</p> |

and we consider it important that our case is made directly to the Inspector.

In continuing to propose the expansion of Wickwar Quarry and the inclusion of the new Preferred Area, SGC have taken insufficient note of the concerns set out in the letter. There are multiple reasons why SGC's recommendation is wrong and should not find its way into the PSP Plan. These range from procedural failures to the failure to accurately address the specific character and nature of the locality. It is our view, that when all factors are properly taken into account, the presumption of sustainable development is reversed. There should not at this point, nor at any point in the foreseeable future, be any designation of land that might result in the quarrying of the land north of Wickwar Quarry.

The current wording of the draft PSP Plan assumes that the planning approval is a given and the only factors to address are mitigation strategies to the numerous weaknesses of the development. The main constraints that SGC have identified themselves are "the proximity of properties at Churchend, listed buildings in the vicinity, archaeology, hydrology and hydrogeology, a public right of way across the site, hedgerows, blasting, and noise and air pollution" are diametrically opposed to the principles of the NPPF and 'sustainable development'. Some of these issues on their own would be sufficient to prevent development but put together it is obvious that the site is not a sustainable one and is contrary to the NPPF. Under the NPPF it is not acceptable to defer such core matters to the planning application stage.

Yours faithfully

Churchend Environment Preservation Group

[REDACTED]

"CHURCHEND ENVIRONMENT PRESERVATION GROUP

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Environment and Community Services Department,
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BS15 0DR.

25 August 2014

Dear Sir/Madam

Response to Consultation Question 2: We welcome your views on the options and recommendation in Appendix 3 for further minerals working at Wickwar Quarry

We are a group of homeowners and residents from Charfield and Churchend. As a group, we seek to preserve our local area, whilst always ensuring that any proposed development is truly sustainable. We welcome the opportunity to comment on Question 2 and hope that you recognise that this response has been carefully researched and considered.

We do not agree with the recommendation put forward by SGCC to approve the extension of the North of Wickwar Quarry. Indeed, we consider the recommendation to have been made without correctly following the requirements set out in the National Planning Policy Framework (NPPF). We therefore ask that our objection be registered in the strongest possible terms. The reasons for our objection are numerous and are detailed below. For ease of reading, we have set these out under

a series of sub-headings.

Before turning to our objections, we wish to note that we recognise the obligations of the Local Authority to provide a minimum 10 year land bank of aggregate minerals, to regularly review this and to produce the plan on which we now comment. We further recognise that there is a presumption of sustainable development. We intend to show that the specific facts of this case render this proposed development unsustainable when the provisions of the NPPF and supporting Planning Practice Guidance are properly applied.

We object on the following grounds:

Inaccurate interpretation of the NPPF and application of its guidance

A number of our specific objections flow from the fact that we consider the recommendation to have been made on a fundamentally flawed interpretation of the NPPF. The NPPF and its related guidance provides a framework within which decisions should be taken, both in defining the Local Plan and in reaching decisions on specific planning applications. Whilst some headings within the NPPF are specific to planning applications or Local Plans, by far the majority of the guidance must be considered at both stages (dependent upon the nature of the development).

To achieve Sustainable Development, as defined and set out in the NPPF, the LPA must consider all elements which make a development sustainable. It is incorrect to defer the consideration of such elements to the planning application stage.

Section 7 of the NPPF states:

“There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles: an economic role, a social role...an environmental role...”

Section 8 of the NPPF goes on to state:

“These roles should not be undertaken in isolation, because they are mutually dependent...”

It is a concern to us therefore, that a recommendation has been made without the correct appraisal. Where is the recognition of the environmental impacts, that Grade I and Grade II listed buildings and residential properties will be within 250 metres of an operating quarry? Where is the test that the presumption of sustainable development can be met? Indeed, where is the evidence of the LPA, as our Local Authority, discharging its duty of care to us, as residents, as taxpayers and as those who will suffer loss as a direct result of this recommendation should it be adopted? Such loss being both financial and in our ability to enjoy our own homes.

Insufficient justification for the need to increase the permitted reserve

We question if the volume data set out at Appendix 3 of the draft report proves the need for the extension of the current quarry.

The total of the permitted available reserves as at the end of 2008 is stated to be 145mt. The requirement stated in the Core Strategy for the period 2008 to 2026 is 58mt, with the additional requirement that a 10 year land bank be available as at the end of 2026.

The draft report states that the 58mt requirement, when annualised, produces a requirement of 2.05mt per annum. Based on the information set out in the draft plan, we believe this figure to be incorrect. The correct figure is 3.05mt per annum. This figure produces an additional requirement for the 10 year land bank after 2026 of 30.5mt - a requirement that can be fulfilled from existing permitted reserves, whilst still leaving 56.5mt available (145-58-30.5=56.5). Even whilst acknowledging the LPA's obligation to ensure a rolling 10 year land bank, the data produced by the LPA shows that a decision to increase permitted reserves need not be taken for decades.

The sales figures quoted suggest that demand is even less than that set out in the Core Strategy, further evidence that the above figure comfortably meets commercial needs.

The draft plan lists four quarries which contribute to the permitted reserve, however, only Wickwar Quarry has any stated indication of the permitted reserve levels. This is the smallest of the four with some 9mt of remaining reserves. It is unfortunate that it is deemed not possible to release the data for the other quarries (stated to be due to confidentiality reasons) as the three quarries owned by Hanson constitute the larger part of the permitted reserve, however the document states that these have reserves of 30 to 40 years for the Chipping Sodbury Quarry, 20 to 30 years for the Tytherington Quarry and 20 to 30 years for the Cromhall Quarry. It does not give the possible extraction rates for these.

It is entirely plausible to suggest, therefore, that demand can be met for the next 10 years (to 2024) by the output produced by the Chipping Sodbury and Wickwar Quarries. Thereafter, Tytherington Quarry can be re-commissioned to provide with the Chipping Sodbury Quarry the required levels for the following 20 years (to 2044). On this basis the existing land bank can be shown to exceed all requirements, with an additional buffer provided by reserves at Cromhall quarry if appropriate.

It is noted and acknowledged that the LPA must comply with the statutory minimums set out in the NPPF. We have shown that they both meet and exceed these. It is our position, that to approve the designating of this land as a Permitted Area is disproportionate to your statutory obligations. The impact of such a designation is not a benign act. It will have immediate and lasting consequences for those who live in this community today, and for many years to come.

Incorrect interpretation of the meaning of competition

It is acknowledged that the NPPF calls attention to the need to ensure that large land banks bound up in very few sites do not stifle competition. This does not imply that at a sub-regional level, artificial means should be used to ensure more than one company is operating. There are sufficient sites within the South West region (particularly Somerset) to assist in facilitating competition, which is further supported at a national level from neighbouring regions.

We respectfully suggest, that the position regarding competition is over-simplified by the LPA and it is misleading to suggest that it only operates at a very local level. The LPA will be aware of the complexities of tendering public projects, or projects to be undertaken on behalf of a public body. Frequently it is the case that competition has to be viewed at an EU level – taking into account the EU Public Procurement Directives. Further, a Local Authority can do little in practice at a local level to preserve competition. For example, it would be powerless to prevent the sale by Cemex of the Wickwar quarry to Hanson. Such a sale may only be of concern when viewed at a national or EU level.

It is therefore of concern that the issue of competition has been given undue weighting in the position and recommendation of the LPA. Yes it is to be considered, but it is not an overriding requirement.

It should also be noted, that the LPA needs to caution itself against acting in such a way so as to support the ongoing business viability of Cemex at Wickwar, at the cost of fulfilling its legitimate obligations under the NPPF and otherwise.

Failure to address secondary materials

The volume data produced in the report fails to consider all relevant requirements set out in the NPPF. They have not addressed the availability or otherwise of the contribution which secondary, substitute or recycled materials could make to the overall aggregate requirement. This is a specific requirement of the NPPF in ensuring the finite resource of primary materials is developed only on a sustainable basis.

Failure to address the proximity to occupied properties, heritage properties and Graded I and II listed buildings

The draft plan does not address the proximity of the proposed extension of the quarry to those properties within the hamlet of Churchend and at Tafarn Bach. Some properties will be as close as 250 metres to the boundary of the proposed Permitted Area.

It is inconceivable that these properties will not be adversely affected by blast vibration and the wider consequences of being located so close to an operating quarry. In some cases, this may well include structural damage.

There are 9 listed properties within a distance of between 250 and 350 metres of the boundary of the proposed Preferred Area. These comprise of 1 Grade I and 8 Grade II listed properties.

Section 132 of the NPPF states:

“When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation...As heritage assets are irreplaceable, any harm or loss of a grade II listed building should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance...[including] grade I and grade II listed buildings...should be wholly exceptional”.

The figures, data and arguments produced by the LPA have not proven a wholly exceptional case for condemning these buildings to inevitable damage. Indeed, such issues have not been addressed at all.

It should be noted, that Churchend and Charfield already endure the daily noise, dust, disruption, light pollution, significant increased traffic movements and general nuisance resulting from the current operations at Wickwar Quarry. As the current quarry operations move closer to Churchend, blasting has already caused disruption and suspected damage to several properties – including suspected blast damage to the Grade I listed St James church. This area of excavation of the proposed area would bring operations twice as close to this church. There is no data that can show that this will not cause irreversible damage. Failure to consider this, along with the consequences that this proximity will bring to the whole of Churchend and Tafarn Bach substantiates our argument that the LPA have incorrectly applied the provisions of the NPPF.

The failure to recognise the practical difficulties of mitigating damage to occupied properties, whether or not of a protected status, or indeed to acknowledge that such mitigation is required, highlights further the procedural failures in this recommendation.

Section 152 of the NPPF states as follows and is specific to the production of Local Plans:

“Local planning authorities should seek opportunities to achieve each of the economic, social and environmental dimensions of sustainable development.... Significant adverse impact on any of these dimensions should be avoided wherever possible, alternative options which reduce or eliminate such impacts should be pursued. Where adverse impacts are unavoidable, measures to mitigate the impact should be considered. Where adequate mitigation measures are not possible, compensatory measures may be appropriate.”

The draft plan is silent on all of these.

Gas pipeline

There is a high pressure gas pipeline which passes through the proposed permitted area on its north-west corner. We estimate that it extends into the area by some 60 metres.

Both the National Grid and the Health and Safety Executive have strict guidelines and policies concerning any blasting, surface mining or other sustained activity close to high pressure pipelines. They rightly consider such areas to be extremely hazardous and for there to be the risk of death or serious injury for people living and working within such a vicinity.

It is of some concern that the LPA has failed to even note its existence, let alone highlight that the existence of this utility

does impact on both the feasibility of extracting minerals in this area and indeed to the physical extent to which minerals may be extracted in such an area.

If it is planned to move the pipeline, then the feasibility of such needs to be assessed at this stage. Such a move will be expensive and disruptive to those households fed by the pipeline and living close to the pipeline.

Under the NPPF it is not acceptable to defer such core matters to the planning application stage. Matters of public safety should rightly be addressed and noted within the Local Plan.

As a group in 2007, we fought hard to win protections in light of the then extension of the quarry. These protections are now being eroded by the planning application referenced as the Land North East of Wickwar Quarry.

In addition, it should be noted that any further extension of Wickwar Quarry on the land referenced as North of Wickwar Quarry, will condemn an entire community to live with the disruption, damage, loss of amenity, nuisance and potential harm to health for multiple generations. We have already endured decades of quarrying at Wickwar. There is a further 10 years supply and adding a further 24 years results in an additional 34 years of quarrying moving ever closer to our homes. When disruption impacts on the daily lives of multiple generations, it cannot be viewed as short term or temporary.

We draw your attention to the requirements of the NPPF regarding the environment and surrounding areas (some of which has been noted above). There is a clear obligation on any LPA to ensure damage to communities is mitigated. With a proximity of 250 metres, we call for realism on how this can actually be achieved. The environmental issues which must be considered include (but are not limited to):

Noise. It is inevitable that noise will increase proportionately to the proximity of excavation works. Full and effective noise screening must be evaluated.

Dust. Dust is an existing problem with Wickwar Quarry. The whole of Charfield suffers from this issue and in the past health concerns have been raised. The proposed extension will result in the prevailing South Westerly winds blowing and depositing this dust across the community. This is not an issue that has been tackled successfully historically. We do not have the confidence that it can be in the future. It is incumbent upon the committee to ensure this matter is successfully resolved.

Lighting. The proximity of the quarry to the community will result in light pollution. Robust measures must be put in place to limit this.

Archaeological and heritage features. We have noted above the number of properties designated with protected status. Some of these are within the 250 metre proximity to the edge of the development. Based on current observations of blasting at the quarry – protecting these valuable sites must be given all due priority. We have already stated that the blast zone will move significantly closer to these buildings.

Traffic. The Tafarn Bach roundabout is already overloaded at key points in the day. Any further access to this area would need to be carefully considered.

Blasting – It is a nonsense not to address the probability of structural damage to some of the properties. This needs to be looked at scientifically.

The NPPF notes further headings. For the purpose of this response document, we have noted only those which are immediately of concern.

Separation and Buffer Zone

Planning Practice Guidance to the NPPF makes it clear that separation distances and buffer zones should be considered on a site specific basis together with other mitigation measures.

The village of Wickwar obtained a 600 metre separation distance from the current Wickwar quarry operation. This local precedent should be taken forwards and repeated here.

Buffer zones, the construction of bunds which must include tree planting, should be created and planted sufficiently in advance of excavation so as to enable trees to properly mature.

We make the above points by way of ensuring these issues enter the debate. Mitigating factors warrant a detailed and thorough study.

Compensation and Indemnity

In addition to those measures noted above to mitigate the impact of extraction and development, given the proximity of the development and difficulties in fully mitigating the effects, we ask for the following:

- Compensation for loss of amenity
- Compensation should any home be sold for less than might otherwise have been the case had the land not been designated a Permitted Area and/or the quarry have been extended (as may be appropriate at the relevant time).
- Compensation should any resident become unable to sell their home (after a period of time to be agreed) and it can

reasonably be argued to be in direct consequence of the designation of the land as a Permitted Area and/or as a result of the quarry extension (as may be appropriate at the relevant time).

- A full indemnity, on a pound for pound basis, in respect of all costs connected with the repair of damage to a property reasonably believed to have been caused as a result of blasting (whether on a single or sustained basis) or any other activity of the quarry which impacts on the structural integrity of any property. Such indemnity not to be limited to the costs of repair, but to include all costs directly flowing from such damage including (but not limited to) alternative accommodation required whilst repairs are carried out in full.

As we are commenting only at this stage, we make the above comments by way of guidance and reserve the right to take specific legal advice to ensure we are fully compensated and indemnified (where appropriate) and at all appropriate times during this process.

In Addition

As this is a consultation phase, we respectfully take this opportunity to highlight to the relevant parties the following:

Article 8 European Convention Human Rights

We will at all times review our rights under Article 8 of the ECHR and, in particular, the right to respect for the home. We remind the LPA, as a state body, that they must discharge their duties proportionately and fairly. Case law provides us, as individuals and as a community, with useful precedents for seeking the assistance of the European Courts on this matter should it prove necessary to do so.

The law of Nuisance

As owners and occupiers of the properties likely to be so heavily impacted by any extension, we have rights of redress under the common law of private and public nuisance and, separately, under statutory nuisance.

The LPA, Cemex and the landowners – The Tortworth Estate – owe each of us a duty of care under the law of nuisance which cannot be avoided or discharged by the existence of a lawful planning permission or other consent. Indeed, case law as recently as July 23 2014 has confirmed that within this growing area of law:

- A planning permission is not a defence to a claim against nuisance
- Both the operator and the landowner can be held liable.
- That remedies potentially available to us include an injunction or, where not appropriate, damages.

We make these points to highlight that we are an engaged community who seeks realistic debate and who will not settle for token assurances. Should any mitigation fall short of what we can reasonably expect, we will utilise this prospective remedy, and such other remedies as may be lawfully available to us to full effect.

Conclusion

As stated in our opening, we hope you recognise that we have sought to provide you with a detailed and considered response.

It is our position, therefore, that there are multiple reasons why the recommendation is wrong and should not find its way into the Local Plan. These range from procedural failures to the failure to accurately address the specific character and nature of the locality. It is our view, that when all factors are properly taken into account, the presumption of sustainable development is reversed. There should not at this point, nor at any point in the foreseeable future, be any designation of land that might result in the quarrying of the land referenced as North of Wickwar Quarry.

We ask that we remain fully engaged in this process. Should you require any clarification of the points raised in the response, we would be happy to provide it.

Yours faithfully

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Churchend Environment Preservation Group”

Please continue on a separate sheet if necessary

Q5. Do you consider it necessary to participate at the oral part of the examination?

- No, I do not wish to participate at the oral examination
- Yes, I wish to participate at the oral examination

Q6. If you wish to participate, please outline why you feel it is necessary to participate at the oral part of the examination.

Please note the Inspector will determine the most appropriate procedure to adopt to hear those who have indicated that they wish to participate at the oral part of the examination.

Please continue on a separate sheet if necessary

Q7. Please indicate which, if any, of the following you wish to be notified about.

the publication of the recommendations of the independent Inspector

the adoption of the Plan

Please indicate as appropriate

Signature:

Churchend Environment Preservation
Group

Date:

6th January 2017

Thank you for your time to complete and return this comment form.
Please keep a copy for future reference.

All comment must be received by no later than 7.00pm on 6th January 2016.