

REGULATORY COMMITTEE
2nd NOVEMBER 2005

**WHITEPARISH: SECTION 73 APPLICATION: EXTRACTION OF SAND WITH
REINSTATEMENT TO AGRICULTURE USING SELECTED FILLING MATERIALS
WITHOUT COMPLIANCE WITH CONDITION 4 OF PLANNING PERMISSION S.03.0592
DATED 16th MAY 2003 TO ALLOW AN INCREASE IN THE RATE OF OUTPUT FROM
THE SITE TO 150,000 TONNES PER ANNUM, CONDITIONS 17 AND 18 TO ALLOW A
CHANGE IN PHASING, CONDITION 24 TO ALLOW A MINIMAL SETTLEMENT
ALLOWANCE ENSURING PONDING DOES NOT OCCUR AND CONDITION 30
TO BRING IT IN LINE WITH THE ALTERATIONS TO CONDITIONS 17 AND 18
AT BRICKWORTH QUARRY, HARESTOCK, WHITEPARISH, FOR
CLEANSING SERVICE GROUP LTD.
(Application No. S.05.8012)**

1. At its meeting on 5th October 2005 the Regulatory Committee considered a report relating to the above and resolved to refuse planning permission contrary to officer recommendation.
2. The proposal being considered relates to a request submitted under Section 73 of the Town and Country Planning Act 1990 by the applicant (Cleansing Service Group) to amend five conditions of an existing planning permission (S.03.0592) relating to sand extraction at Brickworth Quarry. These conditions relate to the following matters:

Condition 4	Increasing the output of sand from 100,000 tonnes to 150,000 tonnes.
Condition 17	To alter the sequence of phasing of working for the site to allow for a new realigned access road and high specification junction which was constructed in 2002.
Condition 18	In conjunction with Condition 17, to restrict commencement of each phase as a result of a change in the sequence of working to ensure that extraction and restoration take place in a progressive manner.
Condition 24	Requested a change regarding surcharging levels. This request was to be denied.
Condition 30	Relating to detailed aftercare arrangements.
3. The details of these proposed amendments and the reasons for them are set out in full in the report considered by the Regulatory Committee and attached at **Appendix A.**

4. At the above meeting a vote was taken on the proposals and on a count of 4 in favour and 6 against the application was deemed to be refused. The minutes of the meeting record that the resolution was to refuse permission for the following reasons:
- (1) *There was insufficient evidence to provide confidence that infilling of excavated sites would be completed.*
 - (2) *Reinstatement would not be brought forward sufficiently quickly to avoid a loss of visual amenity to local residents and visitors.*
5. Concerns have been raised by both officers and Members that the decision arrived at by the Regulatory Committee on 5th October to refuse permission was unsafe and open to challenge by way of judicial review. Alternatively, if a refusal notice is issued the decision could be appealed against by the applicant who, if successful, may have grounds to apply for substantial costs against the County Council.
6. In order to obtain an objective, impartial view on the matter it was decided that specialist independent legal advice should be sought on the legality of the decision and the grounds on which it was made to ensure that the County Council is safeguarded against potential embarrassment and the likelihood of challenge, with the prospect of significantly high costs being awarded against it if the challenge were successful.
7. The legal advice received from Veale Wasborough Solicitors of Bristol is attached at **Appendix B**. Also attached (**Appendix C**) is a letter dated 16th October 2005 to the Chief Executive of the County Council from the applicant's consultants White Young Green, setting out their disappointment at the decision and their intentions regarding the lodging of an appeal and subsequent application for costs.

Recommendation

8. In the light of the legal advice received from Veale Wasborough Solicitors regarding the unsound nature of the decision reached on the application and the likely outcome of an appeal, together with a claim for costs, it is recommended that:-
- (i) The Regulatory Committee hereby considers the decision made on 5th October 2005 afresh, on the grounds that the original decision was legally flawed; and
 - (ii) In the light of (i) above the Regulatory Committee approves the recommendation as set out in the original report (**Appendix A**), which for clarity is set out below:-

That planning permission be granted for the extraction of sand with reinstatement to agriculture using selected filling materials, without compliance with conditions 4, 17, 18, and 30 of Planning Permission S.03.0592 dated 16th May 2003, subject to the following conditions:-

- 1. *Written notification of the date of implementation of this permission shall be sent to the Mineral Planning Authority within seven days of such implementation.*

Reason: *To enable the Mineral Planning Authority to monitor compliance with the conditions of this permission.*

2. *Mineral working shall have ceased and the site shall have been restored in its entirety and in accordance with Drawing No. TRA/MFH/REST/01 dated July 2000 on or before 31st October 2012.*
Reason: *To secure working and restoration within an acceptable timescale.*
3. *The working and restoration of the site shall be carried out in accordance with the details shown on Drawing No. CSG/BWQ/PRP/01 dated May 2005.*
Reason: *To enable the Mineral Planning Authority to adequately control the development and to minimise its impact on the amenities of the local area.*
4. *The output of mineral from the site shall not exceed a level of 150,000 tonnes per annum.*
Reason: *In the interests of highway safety and to safeguard the amenities of local residents living along transport routes to/from the site.*
5. *From the date of this permission the operators shall maintain records of their quarterly output and shall make them available to the Mineral Planning Authority within 14 days of the last day of March each year.*
Reason: *In order that the Mineral Planning Authority can monitor the output of the site.*
6. *Except for sand, no mineral, topsoil, subsoil or overburden shall be exported from the site.*
Reason: *To ensure the preservation of such materials for use in restoration and landscaping.*
7. *No mineral shall be brought onto the site from elsewhere for processing or manufacturing purposes.*
Reason: *To protect the amenities of the local area.*
8. *Access to and from the site for any purpose in connection with the development hereby approved shall only be gained via the junction onto the A36 at Brickworth Corner as approved under planning permission ref. S.00.1519 dated 1st August 2001.*
Reason: *In the interests of highway safety.*
9. *The layout, construction and surfacing of the service facilities area shall accord with those details previously approved under the planning permission that this permission supersedes.*
Reason: *In the interests of highway safety.*

10. *Provision shall be made for the protection and the maintenance of access to the oil pipeline which runs along the line of the site haul road.*

Reason: *To safeguard the services that cross the site.*

11. *No commercial vehicle shall enter the public highway unless its wheels and chassis have been cleaned to prevent mud, dust or other detritus being deposited on the highway.*

Reason: *In the interests of highway safety and to prevent mud being taken onto the highway.*

12. *Notwithstanding the provisions of Parts 19 and 21 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order amending, replacing or re-enacting that Order) no fixed plant or machinery, buildings, structures and erections, or private ways shall be erected, extended, installed, rearranged, replaced, repaired or altered at the site without prior planning permission.*

Reason: *There is an important need to secure control over additional plant and machinery to safeguard the Special Landscape Area designation of the local area.*

13. *Except in emergencies to maintain safe quarry working (which shall be notified to the Mineral Planning Authority in writing within 7 days), no mineral extraction, reclamation, restoration or other works shall be carried out on the site except between the hours of:*

0730 – 1700 Monday to Friday

0730 – 1200 Saturday

No mineral extraction, tipping or other works shall be carried out at any time on Sunday, Bank and National Holidays.

Reason: *To protect the amenities of local residents.*

14. *All vehicles, plant and machinery operated within the site shall be maintained in accordance with the manufacturer's specification at all times, and shall be fitted with and use effective silencers.*

Reason: *To ensure the minimum disturbance from operations and avoidance of nuisance to the local community.*

15. *Internal haul roads and other areas within the service facilities area which are used by vehicles shall be watered and treated with an approved dust laying agent at such intervals as may be necessary to prevent the raising of dust from those areas.*

Reason: *To safeguard the amenity of adjoining residents and landowners.*

16. *Within one year from the cessation of the infilling of the site, the site facilities area shall be cleared of all plant, buildings, structures and machinery, and the site restored in accordance with Drawing No. TRA/MFH/OP/01 dated July 2000.*

Reason: *In the interests of the amenity of the local area.*

17. *The mineral extraction area shall be worked in the following sequence: Phase 1, Phase 3, Phase 4 and Phase 2.*

Reason: *To enable the Mineral Planning Authority to adequately control the development and to minimise its impact on the amenities of the local area.*

18. *Extraction in Phase 3A shall not be commenced until the restoration of Phase 1A has been completed. Extraction in Phase 3B shall not be commenced until the restoration of Phase 1B has been completed. Extraction in Phase 3C shall not be commenced until the restoration of Phase 1C has been completed. Extraction in Phase 4 shall not be commenced until the restoration of Phase 3A has been completed.*

Reason: *To enable the Mineral Planning Authority to adequately control the development and to minimise its impact on the amenities of the local area.*

19. *Any oil or fuel storage containers on the site shall be sited on an impervious surface with bund walls; the bunded areas shall be capable of containing 110% of the container's or containers' total volume and shall enclose within their curtilage all fill and draw pipes, vents, gauges and sight glasses. There must be no drain through the bund floor or walls.*

Reason: *To minimise the risk of pollution of groundwater.*

20. *The site operator shall afford access to the site at all reasonable times to archaeologists nominated by the Mineral Planning Authority who shall be allowed to observe the excavations and record items of interest and finds.*

Reason: *To enable sites of archaeological interest to be investigated and recorded.*

21. *At least 10 days prior notice of the commencement of soil stripping within any working phase shall be sent to the Mineral Planning Authority to enable archaeological observation to be arranged.*

Reason: *To enable sites of archaeological interest to be investigated and recorded.*

22. *The 5 metre perimeter bund to Phases 1, 2 and 3 shall be constructed and maintained in accordance with the details shown on Drawing No. CSG/MFM/LAY/02 dated March 2003. The site operator shall ensure that throughout the life of site operations trees and/or shrubs on the edge of the woodland adjacent to the bund are monitored on a regular basis. Where the health of trees and/or shrubs appears to be deteriorating the site operator shall submit mitigation measures to the Mineral Planning Authority for approval. The approved measures shall be implemented in full.*

Reason: *To safeguard the site and the ecological interest of the surrounding woodland.*

23. *Trees, shrubs and hedges planted in accordance with the approved scheme of landscaping for the Brickworth Corner Junction shall be maintained and any plants which at any time during the development and aftercare period die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.*

Reason: *In the interests of the amenity of the local area and to ensure the development is adequately screened.*

24. *The extracted areas shall be progressively restored following mineral extraction in accordance with and to the levels shown on Drawing No. TRA/MCH/REST/01 dated July 2000.*

Reason: *To ensure that no surcharging of the site is undertaken.*

25. *This permission shall only relate to the deposit of dry commercial and industrial waste and other waste of an inert non-hazardous nature.*

Reason: *For the avoidance of doubt.*

26. *Measures shall be taken for the protection of the high pressure gas main and oil pipeline shown on Drawing No. TRA/MFH/OP/01 dated July 2000 from damage during extraction, infilling and restoration of the site.*

Reason: *To safeguard the services crossing the site.*

27. *No movement of soil shall be carried out except when the full depth of soil to be stripped or otherwise transported is in a dry and friable condition such that the topsoil can be separated from the subsoil without difficulty and so it is not damaged by machinery passing over it.*

Reason: *To prevent damage to soils.*

28. *Upon the completion of tipping operations in each phase, the final layer of the fill shall consist of permeable and obstruction free material, including subsoil, to a depth of 1 metre and finished with a layer of not less than 0.25 metre of topsoil (for the avoidance of doubt, obstruction free means free of any object likely to damage or obstruct a plough or hinder the installation of field drainage). No soil movement shall take place during wet conditions.*

Reason: *To ensure the satisfactory restoration of the site to agricultural use.*

29. *Following the completion of the re-spreading and cultivation of the topsoil, the land shall be sown with a suitable grass seed mix or other vegetation or crop to be approved by the Mineral Planning Authority.*

Reason: *To ensure the satisfactory restoration of the site to agricultural use.*

30. *An agricultural aftercare scheme outline strategy shall be submitted for the written approval of the Mineral Planning Authority at least three months before spreading of subsoil commences. The strategy shall provide for:*

- (a) *The physical characteristics of the land to be restored, as far as it is practical to do so, to what they were when the land was last used for agriculture as satisfies the requirements of paragraph 3(1) of Schedule 5 of the 1990 Act.*
- (b) *A five year period of aftercare in accordance with Annex A of MPG7, specifying the steps to be taken and the period during which they are to be taken, and who will be responsible for taking those steps. The scheme shall include provision of a field drainage system and provide for an annual meeting with the Mineral Planning Authority.*
- (c) *A detailed annual programme, in accordance with Annex A of MPG7 to be submitted to the Mineral Planning Authority.*

Reason: *To comply with the requirements of Schedule 5 of the Town and Country Planning Act 1990 and to ensure that the reclaimed land is correctly husbanded and to bring the land to the standard required for agricultural use.*

31. *At least once every year during the aftercare period a site meeting shall be arranged by the mineral operator, to which the Mineral Planning Authority and the landowner shall be invited to monitor previous performance and to discuss and agree future aftercare proposals. The meeting shall also be attended by the person(s) responsible for undertaking the aftercare steps.*

Reason: *To ensure the productive afteruse of the land and in accordance with the guidance provided by MPG7.*

32. *Upon completion of restoration of the site to agricultural use, the access to Brickworth Corner Junction shall be downgraded and laid out in accordance with a detailed scheme to be submitted to and approved by the Mineral Planning Authority.*

Reason: *In the interests of the amenity of the area and highway safety.*

33. *The previously approved scheme of drainage works shall be implemented in full.*

Reason: *In the interests of ensuring the proper drainage of the site.*

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The following unpublished documents have been relied on in the preparation of this Report:

None