

REGULATORY COMMITTEE
13th DECEMBER 2006

**WHITEPARISH: SECTION 73 APPLICATION TO CONTINUE DEVELOPMENT
WITHOUT COMPLYING WITH CONDITIONS 3 AND 18 OF PERMISSION S.05.8012
TO ALLOW A CHANGE IN THE PHASING AT BRICKWORTH QUARRY,
HARESTOCK, FOR CLEANSING SERVICE GROUP
(Application No. S.06.8015)**

Purpose of Report

1. To consider the above application and to recommend that planning permission be **refused** and to seek authorisation to commence enforcement action.

The Site

2. Brickworth Quarry lies to the south-west of the A36 and A27 Brickworth Corner Junction. The quarry is within a Special Landscape Area (SLA).
3. A site plan showing the phasing of the quarry is attached at **Appendix 1**.

Planning History

4. In brief, the planning history of the Brickworth Quarry site (formerly known as Moor Farm) is as follows:

<u>S.91.0446</u>	Proposed extraction of sand with reinstatement to agriculture using selected fill materials. Approved 10 th March 1993.
<u>S.94.1617</u>	Variation of Condition 1 of S.91.0446 to extend latest commencement date to 10 th March 1999. Approved 22 nd June 1995.
<u>S.98.1159</u>	Variation of Condition 1 to extend latest commencement date to 10 th March 2004. Approved 16 th December 1998.
<u>S.00.1519</u>	Construction and use of private access road and new access on the A36, plus relocation of site infrastructure. Approved 1 st August 2001.
<u>S.00.1630</u>	Modification of Conditions of S.98.1159 for use of alternative access. Approved 8 th May 2001.
<u>S.01.0939</u>	Variation of Condition 1 of S.00.1630 to extend latest commencement date to 31 st October 2002. Approved 3 rd August 2001.
<u>S.02.0509</u>	Modifications of Conditions 9 and 15 of S.00.1519 to extend period for approval of landscaping and dust suppression schemes. Approved 28 th October 2002.
<u>S.03.0592</u>	Modification of Condition 22 of S.01.0939 for use of an alternative access. Approved 16 th May 2003.
<u>S.05.8012</u>	Modification of Conditions 4, 17, 18, 24 and 30 of permission S.03.0592. Approved 2 nd November 2005.

Proposals

5. This application seeks permission to continue development at Brickworth Quarry without complying with two conditions previously imposed on the planning permission granted for the quarry development.

6. It is proposed to modify Conditions 3 and 18 of planning permission S.05.8012 in the following manner:

7. Condition 3 of permission S.05.8012 reads:

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.

The applicant proposes Condition 3 should read:

The working and restoration of the site shall be carried out in accordance with the details shown on Drawing No.CSG/BWQ/PRP/02 dated August 2006.

8. Condition 18 states:

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 restoration of Phase 3A has been completed.

It is proposed Condition 18 should read:

Extraction in Phase 3A shall not be commenced until the restoration of Phase 1A has been completed. Extraction in Phase 3B and Phase 3C shall not be commenced until the restoration of Phase 1B has been completed. Extraction in Phase 4 shall not be commenced until restoration of Phase 3A has been completed. Phase 1C shall be restored upon cessation of site operations.

9. There will be no change in the way quarrying activities are carried out at the site and there would be no deviation from any mitigation scheme e.g. noise and dust suppression already agreed with the Mineral Planning Authority (MPA).

10. The amendment of Condition 18 would lead to Phase 1C being removed from the sequence of restoration. Removing Phase 1C would mean that the approved working plan referred to in Condition 3 would need to be updated. The applicant states that the need to amend the conditions has arisen for two reasons:

(i) Inert Waste Recycling Facility Planning Application

A planning application (Ref. S.06.8004) to develop an inert waste recycling facility (IWRF) in Phase 1C of Brickworth Quarry was submitted to the County Council in March 2006. The application has not yet been determined. If planning permission for the IWRF is granted, it would be necessary to remove Phase 1C from the restoration sequence in order to allow the development of the facility on this Phase. Phases 3 and 4 of the quarry would continue to be worked and restored and the restoration of Phase 1C would conclude at the same time as the restoration of Phase 4.

(ii) Commercial Need

Since the submission of the IWRF application, mineral extraction has moved through Phase 3A into Phase 3B and there is a commercial need to begin working Phase 3C for sand as the applicant has contractual obligations to supply sand to third parties.

Planning Policy

11. The following policies are considered relevant to this application:
- Policies C9 and MSP3 of the Adopted Wiltshire and Swindon Structure Plan 2016
 - Policies C2, C6 and G2 of the Salisbury Local Plan
12. All relevant policies are set out in **Appendix 2**.

Consultations

13. **Salisbury District Council Planning** - no comment received.
14. **Salisbury District Council Environmental Health Officer** - no comment received.
15. **Whiteparish Parish Council** - thoroughly endorses the letter written by Whiteparish Preservation Group (see paragraph 22 below).
16. **Environment Agency** - no objection. As previously commented, a Prevention of Pollution Control permit will be required prior to the commencement of landfilling operations.
17. **Natural England** - no objection.
18. **Countryside Section** - no objection.
19. **Highways Development Control** - no objection.
20. **Local Member (Mr. W.R. Moss)** - no comment made.

Publicity

21. The application was advertised in the local press, by site notices and neighbour notification. Nine letters of representation have been received.
22. Whiteparish Preservation Group objected to the application on the following grounds:
- (i) If permitted the application is likely to lead to an anomalous situation in which Phase 1C would be left unrestored, without a recycling facility ever being located in the empty phase. The Section 73 application and S.06.8004 for the inert waste recycling facility should be considered together.
 - (ii) As the recycling facility is not needed, there is no need for Phase 1C to be left unfilled.
 - (iii) The applicant's reference to economic necessity for the Section 73 application succeeding should be removed from the application.

- (iv) We feel that applicant is currently exhibiting a disregard for planning conditions already in place and that this matter should be resolved before further relaxations are considered.
 - (v) WCC should take opportunity to require the applicant to follow the correct and proper procedures for depositing waste in the various phases, including Phase 1C.
23. The letters of representation from local residents made the same points as Whiteparish Preservation Group but added that if the application succeeds, as Phase 3C would no longer be linked to the restoration of Phase 1C, Phases 1C, 1B, 3C and 4 could be excavated without the need for restoration.
24. Copies of the consultation replies and representations are available in the **Members' Room**.

Planning Considerations

25. Brickworth Quarry currently operates under a conditional planning permission granted in June 2005 (Ref. S.05.0812). This application proposes the modification of two conditions to amend the sequence of working and restoration of the quarry. The 2005 permission imposed Conditions 3 and 18 to ensure that the quarry was worked and restored in a progressive phased manner given that the site is within a SLA.
26. Applications to vary or modify conditions attached to a planning permission are properly known as Section 73 applications. The procedure for such applications requires the planning authority to consider only the question of the condition(s) subject to which planning permission should be granted. If it is decided permission should be granted subject to conditions differing from the previous permission, the planning authority may grant permission accordingly. Alternatively, if the planning authority decides that the permission should be granted subject to the same conditions as in the previous permission, then it should refuse the application. If the planning authority decides that permission should be granted, a new permission would be created and the applicant would have the choice of implementing the new permission or the one originally granted.
27. In determining this application, it will be necessary to consider the condition, the reason for it, its function, the degree to which it makes the development acceptable and therefore whether non compliance with that condition would be acceptable in this context.

Condition 3

28. Condition 3 requires the working and restoration of the site to be carried out in accordance with the details shown on Drawing No.CSG/BWQ/PRP/01 dated May 2005. This drawing shows the quarry divided into four phases with Phases 1 and 3 further sub-divided into three units.

The reason for imposing the condition was 'to enable the Mineral Planning Authority to adequately control the development and minimise its impacts on the amenities of the local area'.

29. The applicant proposes that working and restoration should take place in accordance with an amended drawing (No. CSG/BWQ/PRP/02 dated August 2006). The 2006 drawing is identical to the 2005 drawing except that Phase 1C is now annotated as being removed from the restoration sequence, this being the area within which the IWRF would be located (see paragraph 33 below).
30. The purpose of Condition 3 is, in conjunction with Condition 18, to ensure that the area of land being worked or restored within the wider site is kept to a minimum to reduce the visual impact of the quarry. Condition 3 sub-divides the site into eight units and Condition 18 restricts movement into a new phase (or unit) before a previous phase has been restored.
31. Removing Phase 1C from the sequence of restoration as proposed would mean that the area remained 'open' until the final stages of the quarry development. Although Phase 1C is, in the context of the wider site, well screened from public view, leaving its restoration until the end of the quarry's lifespan (ie 2012) would be unacceptable because it runs contrary to the reason for originally imposing Condition 3 and would only be justified if the area had to be put to some beneficial use or other prevailing planning reason that outweighed the requirement to minimise the areas of land left 'open' during development of the quarry.
32. The applicant has put forward two reasons why the timing when the restoration of Phase 1C should be changed, these being the proposal for a IWRF within the boundaries of Phase 1C and commercial and contractual circumstances that are affecting the company.
33. An application for planning permission to erect an IWRF within the boundaries of Phase 1C has been submitted and is the subject of a separate report being considered by the Committee at this meeting.
34. Whilst recycling of inert waste could be regarded as a beneficial use, the IWRF proposal would not be ancillary to the use of the site as a quarry and landfill site, with little use being made of the imported materials for the restoration of the site. This would be contrary to the stated aims of the Waste Local Plan and sustainable waste management and so must be viewed as unacceptable. If the Committee accepts the recommendation and planning permission for the IWRF is refused some other overriding planning reason would have to exist not to proceed with the restoration of Phase 1C.
35. The applicant has cited commercial/contractual reasons for not carrying out the restoration of Phase 1C at this time. Since the submission of the IWRF application mineral extraction progressed through Phase 3A into 3B. Whilst geological investigations suggested that the sand horizon would thicken from 3A through to 3C, it has been found to be shallower than predicted. This has meant that extraction has moved forward more quickly than expected. In order to continue to supply its customers the applicant wishes to continue working through into Phase 3C which Condition 18 prohibits until Phase 1C has been restored. To comply with this requirement would necessitate a short-term cessation of working.
36. It is appropriate at this point to consider the purpose of Condition 18. Condition 18 dictates the order in which the eight units/phases of the site, as defined by Condition 3, are to be worked and restored. In particular, it provides for mineral extraction to proceed in Phase 3 while restoration progresses in Phase 1. This is to ensure that extraction does not outpace restoration. Under the current permission only three units would be 'open' at any one time, ie either being worked or progressively restored.

37. The applicant proposes that Condition 18 be modified so that extraction can proceed into Phase 3C without Phase 1C having been restored. This would mean that Phases 1C, 3A, 3B and 3C would be 'open' at the same time, therefore increasing the amount of land being worked or restored. This would be contrary to the purpose of Condition 18 and to Development Plan policies.
38. The proposed modifications to Conditions 3 and 18 are as a consequence of the submission of the IWRF application in March 2006, the proposals contained therein and the decisions taken by the applicant pending its consideration. Determination of the IWRF application has been delayed due to the need to question the applicant and obtain additional information regarding the purpose of the development and to consider its compatibility with adopted planning objectives. Moreover, the late submission of this Section 73 application (in September 2006) results from the applicant's misconception that any approval of the IWRF application would authorise changes to the conditions of the planning permission for the wider site.
39. During this time the applicant has taken the decision to continue with sand extraction in order to meet contractual supply obligations rather than source materials from other sites or incur financial penalties. This decision would have been taken knowing that it was possible that planning permission for the IWRF may not be forthcoming. The Council is now being asked to grant a new planning permission for the site which takes account of those decisions.
40. Officers do not consider that the commercial decisions taken by the applicant are material planning grounds for modifying the conditions of the planning permission as proposed. The current planning permission for the site commenced only recently (November 2005) and the applicant would have been well aware of the conditions of the permission. Officers do not consider that there have been any changes in planning circumstances to justify the modification of Conditions 3 and 18 and that the reasons for imposing the conditions remain valid.

Breach of planning control

41. At the time of submission the proposed modification of Condition 18 sought to allow sand extraction commencing in Phases 3B and 3C once Phase 1B had been restored. However, an inspection of the quarry by officers at the end of November revealed that little more than half of Phase 1B had been restored and that sand extraction had almost been completed in Phase 3C.
42. This situation is in breach of Condition 18 of the current permission and this would also remain the case under the proposed modification of Condition 18 proposed by this Section 73 application. No sand extraction should have progressed beyond Phase 3A until Phase 1B had been restored. A breach of planning control has occurred.
43. The provisions of Planning Acts enable the Council to service a "breach of condition notice". This type of notice provides a summary procedure for the Council, as MPA, to secure compliance with conditions imposed on a grant of planning permission for carrying out any development of land.
44. Whilst mindful of the fact that the applicant may well choose to appeal against any decision to refuse planning permission for the IWRF, officers do not consider that this should be allowed to hamper or delay enforcement action required to secure compliance with Condition 18. In particular, officers consider that no further extraction should recommence at the site until earlier phases have been restored. The Committee's authorisation to initiate the appropriate enforcement action is requested.

Conclusion

45. Conditions 3 and 18 of the current 2005 permission for the site were imposed to ensure that the area of land being worked or restored within the quarry was kept to a minimum.
46. The reason for proposing the modification of these conditions is not based on any changes in circumstances relating to why these conditions were imposed or the purposes they serve. The basis of the application is to adjust the conditions so they fit in with the applicant's wishes and actions. Officers do not consider this to be proper grounds for granting planning permission to develop the quarry subject to different conditions.
47. Notwithstanding the proposed modifications, the applicant has continued to progress mineral extraction without restoring earlier phases. A breach of planning control has arisen and it is considered appropriate to commence enforcement action.

Recommendation

48. That:
 - (i) Planning permission be **REFUSED** for the extraction of sand with reinstatement to agriculture using selected filling materials, without compliance with Conditions 3 and 18 of planning permission S.05.8012 for the following reason:
 - The proposed change to the sequence of site working and restoration would have a detrimental impact on the Special Landscape Area in terms of introducing further areas of land being worked or restored within the wider quarry which would have a discordant effect in terms of the visual impact of the quarry and prejudice the progressive restoration of the site contrary to Policy 3 of the Adopted Wiltshire and Swindon Minerals Local Plan, Policies C9 and MSP3 of the Wiltshire and Swindon Structure Plan and Policies C2 and C6 of the Salisbury District Local Plan. It has not been demonstrated that these impacts can be overridden by a clear and genuine case for the need for the alteration to the sequencing of site development.
 - (ii) The Head of Local Plans and Development Control, in conjunction with the Deputy Head of Legal Services, initiate enforcement action by serving a breach of condition notice to secure compliance with Condition 18 of planning permission S.05.8012.

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

Consultation replies and correspondence