

**WHITEPARISH: SECTION 73 APPLICATION FOR EXTRACTION OF SAND WITHOUT
COMPLYING WITH CONDITIONS 3,17 AND 18 OF PLANNING PERMISSION
S.05.8012 AT BRICKWORTH QUARRY, HARESTOCK, WHITEPARISH FOR
RAYMOND BROWN MINERALS AND RECYCLING LTD.
(Application No. S.07.8006)**

Purpose of Report

1. To consider the above application and to recommend that planning permission be granted.

The Site

2. The 21.10 hectare application site is located within Brickworth Quarry which lies to the south-west of the A36 and A27 Brickworth Corner Junction. The quarry is within a Special Landscape Area (SLA). The New Forest National Park lies approximately 1 kilometre to the south and the village of Whiteparish, 1km to the east. The closest property is Harestock Cottage on the opposite side of the A36 from the quarry and approximately 60 metres from the proposed boundary of the working area.
3. A location plan is attached at **Appendix 1** and a site plan at **Appendix 2**.

Background

4. This application for non-compliance with the three conditions has arisen out of operational circumstances at the quarry, principally variability of the sand reserve, the refusal of planning permission to establish an inert waste recycling facility at the site and the service by the Council of a Temporary Stop Notice.

Temporary Stop Notice

5. In 2006, an application was made for the importation and recycling of construction and demolition waste. This facility was proposed within Phase 1C of the quarry, which Condition 18 of planning permission S.05.8012 states should be restored prior to the extraction of Phase 3C. Whilst the application was being considered, the operators made the decision to commence extraction in Phase 3C, leaving 1C unrestored. The decision to proceed to Phase 3C was taken in order to meet contractual obligations. However, the recycling application was subsequently refused. As the site operator continued to extract sand from Phase 3C and also had not completed the restoration of 1B prior to extracting 3B, a Temporary Stop Notice (TSN) was served in January 2007 requiring that extraction operations cease. The purpose of serving a TSN was to enable the Council to stop the breach of planning control for a limited period whilst it was decided whether further enforcement action was appropriate.
6. During that time, the site operator submitted a draft planning application setting out how it proposed to address the breach and also commenced the importation of inert fill material to restore phases 3A and 3B.

7. Subsequent negotiations between Officers and the site operator have resulted in the site operator confirming that it will submit a Pollution Prevention Control (PPC) permit application to the Environment Agency to provide for the infilling of the whole quarry with inert waste only. This will facilitate the working and restoration of the quarry more in line with condition 18 than had been previously proposed in the draft application. This approach is reflected in the new planning application that is the subject of this report.

Variability of sand

8. The extant planning permission requires the site to be worked and restored in accordance with an approved sequence of phasing. The phases have been split into sub-phases to ensure that only a small area of the quarry is operational at any one time and to ensure that working does not outstrip restoration. However, due to the variability of sand, Phases 3A and 3B have been worked out much more quickly than anticipated. This has meant that the applicant has had difficulty in adhering to the approved phasing of working and restoration and meeting market demand and customer contracts. The applicant hopes that by modifying the working and restoration sequence through this planning application a workable and flexible programme of works will be achieved which satisfies the County Council.

Noise

9. The noise survey prepared for a previous application at the site measured background noise at Harestock Cottage, the nearest residential property. Noise generated from this proposal includes digger movements, loading and dump trucks. All vehicles would be fitted with low noise level reversing alarms. The presence of the A36 dominates the background noise level at the site and the noise generated by the extraction activity would not exceed background noise.

Dust

10. The existing dust suppression measures would be extended to the new areas of working. These include dampening haul roads and stockpiles building soil bunds around extraction areas and ceasing extraction and operation of machinery in very windy conditions.

The Proposal

11. This application seeks permission to continue sand extraction and restoration at Brickworth Quarry without complying with three conditions previously imposed on the planning permission granted for the quarry development.
12. It is proposed to seek non-compliance with conditions 3, 17 and 18 in the following manner:

Condition 3:

To allow working and restoration of the site to be carried out in accordance with the details shown on updated Drawing No. CSG/LCS3001/PWP/01A dated February 2007.

Condition 17:

To allow the mineral extraction to be worked in the following sequence: Phase A, Phase B, Phase C, Phase D, Phase E and Phase F and Phase G.

Condition 18:

To allow the applicant to work and restore the site on a percentage (%) basis rather than adhering to a fixed sequence of working and restoration phases.

Planning History

13. The recent planning history of the site is as follows:

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|------------------|--|
| <u>S.02.0509</u> | Permission granted 28 th October 2002 for modification of Conditions 9 and 15 of S.00.1519 to extend period for approval of landscaping and dust suppression schemes. |
| <u>S.03.0592</u> | Permission granted 16 th May 2003 for modification of Condition 22 of S.01.0939 for use of an alternative access. |
| <u>S.05.8012</u> | Permission granted 2 nd November 2005 for modification of conditions 4, 17, 18, 24 and 30 of permission S.03.0592. |
| <u>S.06.8004</u> | Permission refused 19 th December 2006 for construction, demolition and excavation waste recycling facility. |

Planning Policies

14. The following policies are considered relevant to this application:

- Policies C9 and MSP3 and of the Wiltshire and Swindon Structure Plan 2016
- Policy 3 of the Adopted Wiltshire and Swindon Minerals Local Plan 2001.
- Policy C6 of the Salisbury Local Plan 2003.

All relevant policies are set out in the attached **Appendix 3**.

Consultations

15. **Salisbury District Council - Planning** – no objection.

16. **Salisbury District Council - Environmental Health Officer (EHO)** – no objection.

17. **Whiteparish Parish Council** – object to the application for the following reasons:

- (a) If the re-designation and altered sequencing of phases are to be approved, do not accept the logic of leaving restoration of Phases D and G until last. The sequence would require a new haul road over restored Phases C, E and F. Believe that, in principle, restoration should be completed in the furthest phases (from the Site Operations Area) first.
- (b) There seems to have been inordinate delay in procuring an application for a PPC permit. Ask that approval of this application to re-phase is conditional upon receipt of a valid application for a PPC permit.
- (c) The application uses unsubstantiated evidence, for example: "It is the accepted practice to fill the deepest section of a landfill last of all".

18. **Environment Agency** – no objection.

19. **Natural England** – no objection.

20. **Highways Agency** – no objection.

21. **Countryside Section** – no objection.

22. **Highways Development Control** – no objection.

23. **Local Member – Mr. W.R. Moss** – no comment received.

Publicity

24. The application was advertised in the local press, by site notices and neighbour notification. A letter was received from the Whiteparish Preservation Group. The key concerns of the Group are outlined below:

Comment objectively on the application and suggest constructive alterations along the following lines:

- (a) The sequence in which the new phases are to be filled is illogical and should be altered.
- (b) The statement 'It is accepted practice to fill the deepest section of the landfill last of all' is unsupported.
- (c) The applicant should accept, via conditions that it has to operate under the current regulatory environment and proceed with all speed to obtain the deposition licences required to operate the site legally.
- (d) If application is passed by WCC, conditions should be attached to the new permissions such that the applicant is not allowed to extract until it has produced written proof of a valid application to the Environment Agency for a licence to deposit inert waste.
- (e) WCC should impose conditions designed to ensure that the site operator must comply with conditions before extracting sand from the site.

Planning Considerations

25. Applications not to comply with conditions attached to a planning permission are properly an application under Section 73 of the Town and Country Planning Act 1990. Section 73 applications require the planning authority to consider only the question of the conditions subject to which planning permission should be granted.
26. 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 permission should be granted subject to the same conditions as the previous permission, then it should refuse the application.
27. In determining the 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 the variation would be acceptable in this context.

Condition Modifications

Condition 3

28. Condition 3 of S.05.8012 currently requires the working and restoration of the site to follow the details shown on a previously approved plan. This sub-divides the site into a number of phases numbered 1 to 4.
29. It is proposed that the site now be worked in accordance with the revised drawing which re-classifies the phases from A to H.

30. For the purposes of the new application, the applicant has changed the classification of the phases as follows:

Phase A	Former Phase 1A and restored portion of Phase 1B
Phase B	Remaining portion of Phase 1B, 1C and proportion of Phase 2
Phase C	Former Phase 3A and 3B
Phase D	Portion of Phase 3C
Phase E	Portion of Phase 4
Phase F	Portion of Phase 4
Phase G	Portion of Phase 4
Phase H	Portion of Phase 2
Site Operations Area	Phase 2 area required for sand screening and stockpiling.

Extension of Extraction Area

31. In addition to modifying the sequence of working and restoration, this application also proposes an extension to the extraction area. The southern corners of Phases D and G were included within the original application area for sand extraction and infilling but were intended for the location of a southern access, site office, car parking and stockpiling. However, a later planning permission relocated these facilities to the northern section of the quarry. For some reason, the southern corners were left out of extant plans for sand extraction and infilling.
32. The applicant now intends to extract and infill these southern corners and relinquish working in Phase H and the Site Operations Area as these areas have no viable sand deposit. A 10 metre buffer zone would be left between the working area and the public footpath and a soil bank would be placed within the buffer zone to screen the workings from the footpath.
33. The revised plan shows an acceptable re-phasing, extension of working area and restoration contours for the quarry. Therefore the proposed condition is considered acceptable.

Condition 17

34. The 2005 permission states that the extraction area be worked progressively in four main phases. Phase 2, the closest to the site access was to be worked and restored last. Condition 17 of S.05.8012 currently states:

The mineral extraction 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 minimise its impact on the amenities of the local area.

Sequence of working

35. The application proposes to continue working through the current working area (Phase D) and infill Phase C using stripped soils, overburden and interburden. Additional soils may be recovered from adjoining stockpiles with a view to completing restoration of those phases in August/September 2007. In the meantime, waste material from screening operations and imported inert waste would be used to restore Phase B and a portion of Phase H.
36. Restoration would initially utilise waste from the sand screening operations, in situ clay and then two metres depth of imported waste. Upon approval of the IPPC, inert materials to finish restoration would be imported. An average infilling rate of 500 tonnes per day is anticipated. As sand extraction comes to an end in Phase D, soil stripping would commence in Phase E.

37. The material stockpiled in the screening bunds along the A36 would be used in the restoration of Phases E-G. The site would be restored to agriculture. The restoration contours are based on fill with inert waste only.
38. Phases D and G are anticipated to form the deepest part of the site and would be the last phases to be restored. The reason for leaving the deepest phases until last is that for reasons of slope stability and water management, it is easier to work sand from shallow to deep deposits. Phase H and the Site Operations Area have been found to contain no significant mineral therefore would not be worked. As a result, the applicant proposes that Condition 17 should read:
- The mineral extraction shall be worked in the following sequence: Phase A, Phase B, Phase C, Phase D, Phase E, Phase F and Phase G. No minerals shall be excavated from Phase H and the Site Operations Area.*
39. Both Whiteparish Parish Council and Whiteparish Preservation Group questioned the proposed working of Phases E to G from north to south as this would require vehicles driving over restored phases. The applicant has responded that the direction of working is the same method employed for working Phases C and D which was effective in dealing with the variability of sand. Phases E and F contain shallow deposits of sand which can be worked and restored quickly.
40. A designated haul road would be routed along filled ground between Phases C, E and F and would be fenced off from the restored land. Once Phases D and G were restored the haul road would be taken up and the land below it restored.

Condition 18

41. Condition 18 prevented working in Phase C (previously 3B and 3C) until the restoration of Phase B (previously 1B and 1C) had been completed. The reason for imposing this condition was to ensure that the area of land being worked or restored within the wider quarry was kept to a minimum to reduce the visual impact of the site.

Condition 18 currently states:

Extraction in Phase 3A shall not be commenced until 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.

42. Phase 1A has now been restored and Phase 1B is largely restored. As there is an exemption from waste licencing in Phases 3A and 3B, the applicant considers it logical to complete restoration of these phases before completing restoration of Phases 1B and 1C which will require a full PPC permit to infill given the depth of the soil here. The applicant proposes that Condition 18 should read:

Extraction in Phase E shall not commence until restoration of Phase C has been completed. From completion of Phase C restoration the total area of the site being open shall not exceed 48% by surface area – except under prior written agreement from the MPA. This requirement will be supported by the provision of a detailed land use survey by the operator, at his own expense, and an analysis of the total area of land in operational use - where such use is defined as land stripped of soil undergoing mineral extraction, undergoing infilling or undergoing restoration, but excluding land which is in the aftercare phase.

43. Rather than setting out which phases of land would be worked and restored in which order, the proposed Condition 18 sets a maximum % figure of land which would be operational at any one time. The applicant states that this would give greater flexibility as to which area was worked or restored at any one time whilst restricting the 'open' area to a maximum 48% to satisfy the need to control the extent of working in the SLA.

44. However, officers do not consider that the proposal for a percentage figure to control the amount of land operational at any one time is acceptable. The use of a percentage figure would be impossible to police on the ground and the submission of the surveys by the operator at six monthly intervals would alert neither the Council nor the operator to any breach of the percentage figure until such time as it had occurred. The proposed condition is therefore contrary to the established tests for planning conditions as set out in Government Planning Circular 11/95.
45. In order to ensure that extraction activities do not outpace restoration operations, officers consider that Condition 18 can be altered to require that no extraction commences in Phase E until an independent site survey has shown that commencing extraction in Phase E would not leave more than 40% of the quarry open. Extraction in Phase F would not commence until such time as Phase B and Phase C have been restored. Sand reserves in Phase D are more plentiful and certain and so working of this phase of the site is not expected to proceed through this area at the pace experienced in earlier phases. This will allow for restoration works to 'catch-up' with the extraction at the site. The onus will be on the site operator to manage the extraction rate against the restoration rate. Given the variability of sand reserves in Phase F, it is not considered appropriate to limit the extraction of Phases F and G once Phases B and C have been restored.

Conclusion

46. The main objective of the County Council is to achieve the efficient working and restoration of Brickworth Quarry in a way which does not have a significant visual impact on the Special Landscape Area. Modifications to conditions 3, 17 and 18 are considered acceptable as they are unlikely to result in adverse impacts on local residents, the SLA or the local highway network. However, timely restoration of the quarry depends upon the grant of the IPPC. If the IPPC is refused or delayed, the County Council could once again suspend sand extraction to prevent working outstripping restoration.

Recommendation

47. That planning permission be granted for the extraction of sand without compliance with conditions 3, 17 and 18 of planning permission S.05.8012 for the following reasons and subject to the following conditions:

The proposed modifications to Conditions 3 and 17 and 18 (as amended) are considered acceptable as they would provide for the efficient working of the quarry more in line with the conditions whilst being unlikely to result in adverse impacts on local residents, the Special Landscape Area or the local highway network.

1. Mineral working shall have ceased and the site shall have been restored in its entirety and in accordance with Drawing CSG/LCS3001/PWP/01A dated February 2007 on or before 31st October 2012.

Reason: To secure working and restoration within an acceptable timescale.

2. The working and restoration of the site shall be carried out in accordance with the details shown on Drawing No. CSG/LCS3001/PWP/01A dated February 2007.

Reason: To minimise the duration or disturbance from the development hereby permitted.

3. 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.

4. 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.

5. Except for sand, no mineral, topsoil or subsoil shall be exported from the site.

Reason: To ensure the preservation of such materials for use in restoration and landscaping.

6. No mineral shall be brought onto the site from elsewhere for processing or manufacturing purposes.

Reason: To protect the amenities of the local area.

7. 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 Brickworth Corner as approved under Planning Permission Reference S.00.1519 dated 1st August 2001.

Reason: In the interests of highway safety.

8. 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.

9. Provision shall be made for the protection and 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.

10. 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.

11. 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.

12. Except in emergencies to maintain safe working (which shall be notified to the Mineral Planning Authority in writing within 7 days), no operations shall be carried out on the site except between the hours of:

07.30-17.00 Monday to Friday
07.30-12.00 Saturdays

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

Reason: To protect the amenities of local residents.

13. 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.

14. 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 ensure the minimum disturbance from operations and avoidance of nuisance to the local community.

15. Within one year from the cessation of 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.

16. The mineral extraction shall be worked in the following sequence: Phase A, Phase B, Phase C, Phase D, Phase E and Phase F and Phase G. No minerals shall be excavated from Phase H and the Site Operations Area.

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

17. Extraction in Phase E shall not commence until an independent site survey has been undertaken to demonstrate that extraction of Phase E shall not take the total open area of the quarry to above 40%. Extraction in Phase F shall not commence until restoration of Phase B and Phase C is 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.

18. Any chemical, oil or fuel storage 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) total volume and shall enclose within their curtilage all fill and draw pipes, vents and gauges. There must be no drain through the bund floor or walls.

Reason: To minimise the risk of pollution of watercourses.

19. 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.

20. 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.

21. The 5 metre perimeter bund to Phases 1,2 and 3 shall be constructed and maintained in accordance with details shown on Drawing No. CSG/MFM/LAY/02 dated March 2003. The site operator shall ensure that throughout the life of the 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 the 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.

22. Trees, shrubs and hedges planted in accordance with the approved scheme of landscaping for 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 that development is adequately screened.

23. 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.

24. 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.

25. 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.

26. No movement of soils 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 as 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.

27. Upon the completion of tipping in each phase, the final layer of the fill shall consist of permeable and obstruction free material, including subsoil, to a depth of one metre, 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.

28. Following the completion of re-spreading and 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.

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

- (f) 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 satisfied the requirement of Paragraph 3(1) of schedule 5 of the 1990 Act.
- (g) 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.
- (h) 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 reclaimed land is correctly husbanded and to bring the land to the standard required for agricultural use.

30. At least once a 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.

31. 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.

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

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

GEORGE BATTEN

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Report Author

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

Consultation replies and correspondence