

**WHITEPARISH: APPLICATION UNDER SECTION 73
OF THE TOWN AND COUNTRY PLANNING ACT 1990
FOR THE MODIFICATION OF CONDITIONS 9 AND 15 OF
PLANNING PERMISSION S.00.1519 AT MOOR FARM
(Application No. S.02.0509)**

Purpose of Report

1. To consider the application and to recommend that planning permission be granted to modify Conditions 9 and 15 of Planning Permission S.00.1519 subject to the completion of a Supplemental Legal Agreement relating to the routing of lorries using the site.

Background

2. In brief, the planning history of the Moor Farm site is as follows:-
 - (i) Planning permission (S.91.0446) for sand extraction and reinstatement to agriculture using selected materials was issued on 10th March 1993 subject to conditions and the completion of legal agreements.
 - (ii) Planning permission (S.94.1617) for the modification of Condition No. 1 of S.91.0446 to allow for an extension of time for commencement of development was granted on 22nd June 1995.
 - (iii) Planning permission (S.98.1159) for the modification of Condition No. 1 of S.94.1617 to allow for a further extension of time for commencement of development was granted on 16th December 1998.
 - (iv) Planning permission (S.00.1519) for the construction of a new access road, new junction arrangements at Brickworth Corner and ancillary works was approved on 25th April 2001 subject to the satisfactory completion of a legal agreement relating to the routing and management of lorries using the site.
 - (v) Planning permission (S.00.1630) for the modification of conditions attached to S.98.1159 to facilitate the new access arrangements at Brickworth Corner was also granted on 25th April 2001.

- (vi) In considering planning applications S.00.1519 and S.00.1630, Members resolved to modify the terms of Condition No. 2 (as proposed in the Committee Report) and thus extend the deadline for commencement of development of the proposed new access road (S.00.1519) to 31st October 2002. This resulted in the establishment of two different deadlines for commencement of development on site. Condition No. 1 of S.00.1630 stipulated 31st October 2001, whereas Condition No. 2 (as revised by Committee) stated 31st October 2002.
- (vii) In order to resolve the potential conflict over commencement of development dates, planning permission (S.01.0939) was granted to modify the terms of Condition No. 1 of S.00.1630.

The Site

- 3. A site location plan is attached at **Appendix 1**.

The Application

- 4. The Applicant is seeking permission to modify the terms of Conditions 9 and 15 of Planning Permission S.00.1519 in order to allow the submission and approval of reserved matters. The current wording of these conditions is as follows:-

Condition 9 - Within one month of the date of this permission, a scheme detailing dust suppression measures shall be submitted to and agreed in writing by the Mineral Planning Authority. The scheme shall be implemented for the duration of the development.

Condition 15 - Within one month of the date of this permission, a scheme of landscaping shall be submitted to and agreed in writing by the Mineral Planning Authority. The scheme shall include details of:-

- (a) The position, species and size of all existing trees, shrubs and hedgerows to be retained;
- (b) The position, species, density and initial sizes of all new trees and/or shrubs;
- (c) The hard landscaping/earth moulding proposed;
- (d) The programme of implementation of the scheme;
- (e) The arrangements for subsequent maintenance.

- 5. The Applicant has sought to argue that the current wording of these conditions presented insufficient time to both prepare the necessary schemes and have them determined by the Mineral Planning Authority (MPA). For this reason the application requests that the wording of these conditions be modified by deleting "*one month*" and substituting with "*three months*" and deleting "*this permission*" and substituting with "*this modification*".

Consultations

6. **Salisbury District Council** - no objection.
7. **Whiteparish Parish Council** - objects to the application. "The conditions of permission S.00.1519 for a dust suppression scheme and a landscaping scheme were clearly stated to be submitted within one month of the date of the grant of permission and were also subjects of consideration at the County Council Environment and Transport Committee meeting held on 28th March 2001.

The Applicant failed to comply, even though the requirement had been known and agreed by the Applicant in March 2001, well before the grant was made dated 1st August 2001. The Applicant had, therefore, at the very most, five months' notice of the requirement before permission was granted, producing a total of at least six months to prepare the submissions. Thus the Applicant had ample time to fulfil the requirements.

No satisfactory case has been made by the Applicant to modify the conditions of planning permission S.00.1519. Because the Applicant has failed to meet the conditions of the planning permission, a new full application should now be required before any work to develop the site commences. The conditions that inevitably will be applied must be regarded as mandatory."

8. **Highways Agency** - no comments.
9. **Environment Agency** - no comments received.
10. **Fisher German (Esso Pipeline)** - "No objections to the proposals in principle. However, the Applicant should be aware that the proposed schemes must comply with covenants contained in a Deed of Grant between Esso and the landowner."
11. **Rights of Way** - any landscaping works should make allowances for Footpath 12.
12. **County Archaeologist** - no comments.
13. **Highways** - no comments.
14. **Whiteparish Preservation Group** - wish to make the following observations:-
 - "(i) Robert Long Consultancy suggests they were given insufficient time to prepare the required schemes, yet the consent was granted on 1st August 2001 and they knew of the conditions during discussions with County Council officers in March 2001.
 - (ii) It lacks credibility that Robert Long Consultancy should put a formal proposal for a time extension to a consent that expired on 1st September 2001 in a letter dated 28th February 2002.

- (iii) Robert Long Consultancy failed to acknowledge that the required schemes were submitted in September 2001 but were 'out of time'. This is an attempt to reintroduce these schemes and resurrect a planning permission that is time expired.
- (iv) In the penultimate paragraph of their letter, the Applicant's Agent apparently seeks to blame the County Council for significant delays:-
 - Examination of the facts reveals that any delays are the fault of the Applicant or the Applicant's Agent.
 - The original permission was granted in 1993.
 - The Applicant has known the conditions to be imposed in the grant of planning permission since March 2001.
- (v) There is little point in having conditions or time deadlines unless they are observed and appropriately policed by the administering party.
- (vi) This is another attempt by Robert Long Consultancy to circumvent their mistakes. Robert Long Consultancy were given adequate time to submit the required dust suppression and landscaping schemes but failed to do so within the stipulated period of time.
- (vii) Their failure resulted in the planning permission becoming time expired and the only satisfactory outcome is for the submission of a new planning application for this development."

Publicity

- 15. The application was advertised in the press and by way of site notices. To date several letters of objection have been received. A summary of each letter is attached at **Appendix 2**.

Planning Considerations

- 16. Section 73 of the Town and Country Planning Act 1990 allows a developer to apply for planning permission to develop land without complying with conditions previously imposed in respect of such development. It is, in effect, a power to discharge or amend planning conditions but its actual legal effect is somewhat different. This is because the outcome of a successful (Section 73) application is the issue of a wholly new and "free standing" planning permission which the Applicant is entitled to implement or ignore. It is also important to consider that a decision under Section 73(2) leaves the original planning permission intact and unamended - it remains, therefore, as a baseline.

17. Case law dictates that the interpretation of Section 73 (and thereby the determination of applications submitted pursuant to Section 73) is no longer as simple or as limited as considering only the conditions subject to which the permission was originally granted. As stated above, a decision under Section 73 effectively equates to the issue of an entirely new planning permission and therefore the consideration of such an application should be the same as if it were a 'normal' application. Therefore, the Planning Authority is obliged to make its decision based on consideration of the application in the light of the Development Plan and all other material considerations unless prevented from so doing by some other part of the statutory code.
18. With regard to policy considerations and general conformity with the Development Plan, the justification for permitting the development of Moor Farm was considered at the time of the granting of the original permission (1991). Since then there has been no significant change to planning policy or material considerations that alter this position. The proposed modification of Conditions 9 and 15 of S.00.1519 does not represent a material departure from the Development Plan. This is supported by the fact that although the site is situated within a Special Landscape Area, Salisbury District Council did not raise objections on policy grounds. The status of the area in landscape terms will not be materially affected by this proposal since securing landscaping and dust suppression measures will act to mitigate the environmental impact of the site.
19. In the wider context, consideration should be given to the fact that this site contributes towards the stock of soft sand reserves with planning permission (the landbank) required to ensure continuity of aggregates supply in line with Government Guidance, as set out in Minerals Planning Guidance Note 6 (April 1994). Policies MSP5 of the Adopted Wiltshire Structure Plan (January 2001) and 34 of the Adopted Wiltshire and Swindon Minerals Local Plan (November 2001) (as set out in the attached **Appendix 3**) seek to ensure that stocks of permitted reserves (landbanks) are maintained throughout the relevant Plan period. Should the Moor Farm site fail to become operational, the MPAs (Wiltshire and Swindon) will need to consider identifying further soft sand sites to account for the potential shortfall in permitted reserves.
20. In dealing with objections submitted by the Parish Council, the Preservation Group and others, it is clear that many consider there to be no legal grounding for determining this application (the same argument has also be applied to the proposal to modify Condition 8 of S.00.1519, the subject of another report presented to this Committee. It is argued that the Applicant's failure to comply with Conditions 9 and 15 of S.00.1519 within the set timescales effectively rendered the entire permission void and unimplementable.

21. This is not the case. Having sought the advice of Counsel regarding this matter, it is clear that failure to meet the prescribed deadlines for submission of schemes/reserved matters is simply deemed not to be in accordance with conditions rather than the whole permission being regarded as having lapsed. This is because Section 73 of the Town and Country Planning Act allows for planning applications to be made to impose different conditions (eg extending/stipulating a new time limit for submission of schemes) provided the permission to which they relate is extant in the sense of Section 73(4). In this respect, because the time limit for commencement of development (31st October 2002), as opposed to the time limit imposed for the submission of schemes, has not expired, the permission is extant. Therefore, the Applicant's request to modify Conditions 9 and 15 can be considered. The only question that remains is what is implied by the proposed modification.
22. As outlined above, the Applicant's failure to submit schemes pursuant to Conditions 9 and 15 within the timescales is considered, in planning terms, to represent a technical breach of the conditions. This application seeks to remedy the situation in order that the requirement to submit and have approved dust suppression and landscaping details can be met in accordance with conditions, rather than an Enforcement Notice.
23. Again, as outlined above, the outcome of determining a Section 73 application is the issue of an entirely new permission, albeit one which predominantly reflects the terms of the original. In this instance, as S.00.1519 was issued following completion of a Section 106 Legal Agreement (relating to lorry routeing/management), it follows that should this application be permitted, the Applicant will be required to complete a Supplemental Legal Agreement (effectively an update of the original).

Conclusions: Options Considered

24. This application seeks approval to modify the terms of Conditions 9 and 15 of Planning Permission S.00.1519 in order that dust suppression and landscaping schemes can be submitted, determined and implemented within a reasonable timescale.
25. Should planning permission not be granted in this instance, the Applicant will rely upon the existing permissions (S.00.1519 and S.01.0939) to carry out the development. As outlined above, these permissions remain extant and cannot be simply abandoned or rendered void through a failure to meet conditional time limits for the submission of certain reserved matters. As a consequence, should S.00.1519 be implemented, the Mineral Planning Authority would be obliged to use enforcement powers to secure the submission of dust suppression and landscaping details.

Recommendation

26. That, subject to the satisfactory completion of a Supplemental Section 106 Agreement in respect of lorry routeing and management, planning permission be granted to modify the terms of Conditions 9 and 15 of Planning Permission S.00.1519 as follows:-

Condition 9 - Within **three months** of the date of this permission, a scheme detailing dust suppression measures shall be submitted to and agreed in writing by the Mineral Planning Authority. The scheme shall be implemented for the duration of the development.

Condition 15 - Within **three months** of the date of this permission, a scheme of landscaping shall be submitted to and agreed in writing by the Mineral Planning Authority. The scheme shall include details of:-

- (a) The position, species and size of all existing trees, shrubs and hedgerows to be retained;
- (b) The position, species, density and initial sizes of all new trees and/or shrubs;
- (c) The hard landscaping/earth moulding proposed;
- (d) The programme of implementation of the scheme;
- (e) The arrangements for subsequent maintenance.

Reason for Recommendation

27. As outlined in the main body of the Report.

RICHARD J. LANDER

Director of Environmental Services

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

Consultation responses and correspondence

Environmental impact of the Recommendation contained in this Report:

As outlined in the main body of the Report