

**REGULATORY COMMITTEE**  
**24<sup>th</sup> JULY 2002**

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**WHITEPARISH: APPLICATION UNDER SECTION 73**  
**OF THE TOWN AND COUNTRY PLANNING ACT 1990**  
**FOR THE MODIFICATION OF CONDITION 8 OF**  
**PLANNING PERMISSION S.01.0939 AT MOOR FARM**  
**(Application No. S.02.0489)**

**Purpose of Report**

1. To consider the application and to recommend that planning permission be **REFUSED**.

**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 approved in 1991 subject to conditions and the completion of legal agreements. Planning permission was eventually issued in March 1993.
  - (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 22<sup>nd</sup> 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 16<sup>th</sup> 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 25<sup>th</sup> April 2001 subject to the satisfactory completion of a legal agreement relating to the routeing and management of lorries using the site. Following completion of the legal agreement the planning permission was issued in August 2001.
  - (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 25<sup>th</sup> 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 31<sup>st</sup> 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 31<sup>st</sup> October 2001, whereas Condition No. 2 (as revised by Committee) stated 31<sup>st</sup> 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 location plan is attached at **Appendix 1**.

### **The Application**

- 4. The application seeks approval to modify the terms of Condition No. 8 of planning permission S.01.0939 to allow for the use of an alternative, but temporary access into the Moor Farm site.
- 5. Condition No. 8 of planning permission S.01.0939 states:-

*"Unless otherwise agreed in writing by the Mineral Planning Authority, access to and from the site for any purpose in connection with the development hereby permitted shall only be gained via the junction approved under planning permission S.00.1519 at Brickworth Corner."*
- 6. In seeking a modification to this condition, the Applicant is requesting approval to use an existing farm access off the A36 for a temporary period whilst construction of the proposed internal haul road takes place.
- 7. If permitted, the construction of the proposed haul road from Brickworth Junction to the Site Control Area would be undertaken in two phases. The first phase would involve the stripping of soils along the route of the haul road to form the required screening bunds along the boundary of the site with the A36. The second phase would involve the importation of selected hardcore to form the sub-base of the haul road (prior to final surfacing) once the required works at Brickworth Junction itself have been completed.
- 8. The Applicant considers that the use of an alternative access and the creation of a circulatory route through the site would reduce the overall impact of lorry movements at Brickworth Corner during the early phases of the development of the site.

## **Consultations**

9. **Salisbury District Council** - "The County Council will be aware that this Council did not support application S.00.1519 which gave permission for the new access. However, now that the application is approved, the Council considers it important in the interests of highway safety and amenity that an access of sufficient standard to service the development is provided before any development is commenced, and that one access only is used in relation to the construction of the access road and the development itself and the future operation of the sand extraction works. The Council does not see sufficient reasons within the Applicant's supporting letter to justify modifying the condition as suggested, which would also appear to cut across the requirements of Condition 6 of planning permission S.00.1519. The Council therefore **does not support** the application.

Notwithstanding the above, if the County Council is minded to grant permission, it is recommended that appropriate conditions limiting the works to a temporary timescale of as short as possible duration, and requiring appropriate landscaping and reinstatement works, are imposed. Further, careful consideration should be given to the route taken by lorries bringing material to the site."

10. **Whiteparish Parish Council** - "Objects strongly to this application. Since 10<sup>th</sup> March 1993, when approval for extraction from the Moor Farm Sandpit was granted, the Applicant has been aware that a principal condition (required by the Secretary of State for Transport) is that no development shall commence until access works from the A36 have been completed. This condition was reiterated as late as 28<sup>th</sup> March 2001 at the County Council's Environment and Transport Committee meeting (when considering the Applicant's request to change the location of the access to Brickworth Corner), having been discussed and agreed with the Applicant.

There is no apparent reason why the A36 access works have not already been started.

There has been no substantive change in circumstances since March 2001 that would lead to a need to alter the condition. The use of the A36 as the only access to the site was specified (by the Secretary of State for Transport) in order to ensure protection of the environment and also to maximise road safety."

11. **Highways Agency** - "We do have strong concerns over the safety implications of allowing this modification to the planning permission that would allow heavy goods vehicles to make right-turn movements from the site through the Brickworth Junction traffic signals without the benefit of traffic signal control. These movements would be unexpected and potentially dangerous.

We would therefore strongly recommend that the existing condition should remain in place to prevent these movements taking place until the new works are complete."

12. **Environment Agency** - no comments received.
13. **Fisher German (Esso Pipelines)** - no objections subject to the Applicant complying with covenants attached to the Deed of Grant between Esso and the landowner.

14. **Rights of Way** - no comments.
15. **Highways** - whilst acknowledging the recommendation of the Highways Agency, in the event of planning permission being granted, the existing access should be suitably resurfaced to accommodate the haulage lorries likely to use it in connection with the development.
16. **County Archaeologist** - no comments to make as the proposal is unlikely to impact upon any archaeological features.
17. **Whiteparish Preservation Group** - objects on the following grounds:-
- (i) No genuine justifiable reasons are given in support of the proposal.
  - (ii) The proposal clearly contradicts the terms of Condition No. 6 of planning permission S.00.1519 which states that *"No works within the development hereby permitted (except those in the public highway) and no extraction of sand from the development site (reference S.00.1630) shall commence until the works in the public highway are completed. The works in the public highway shall be completed within four months of their commencement."*
  - (iii) Condition 6 was imposed with the specific intent of ensuring that the developer does not simply *"walk away, thus potentially extending the life of the overall operation indefinitely."*
  - (iv) The application is seeking approval to carry out certain works within the development site before completing the necessary highway works stipulated in Condition No. 6 of S.00.1519. *"This represents a cynical attempt to implement the planning permissions before the October 2002 deadline."*
  - (v) Modification of Condition 8 is an attempt to carry out works that contravene the existing consents and conditions.
  - (vi) The Applicant cannot, and should not, blame the County Council for failing to implement the existing planning permissions. The original permission for development at Moor Farm dates back to 1993 and nothing has happened to date.
  - (vii) The only satisfactory way forward is for a full review of a new planning application in the light of current legislation.

### **Publicity**

18. 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**

19. 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.
20. 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 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 doing so by some other part of the statutory code.
21. With regard to policy considerations, the proposed modification of Condition 8 of S.01.0939 does not, in itself, represent a material departure from the Development Plan. The site is located within a Special Landscape Area but, as outlined in another report presented to this Committee, it is considered that the proposal will not materially affect the area's designated status.
22. In the wider context, consideration should be given to the fact that the 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 Policy Guidance Note 6 (April 1994).
23. However, in an overall sense, the justification for either permitting or refusing this proposal will inevitably be based on consideration of the following, more pertinent, material considerations. Therefore, the matters considered material to the consideration of this proposal can be summarised as:-
  - The need for a temporary, alternative access;
  - Ensuring the development is carried out in accordance with the terms and conditions of its planning permission(s); and
  - Highway safety.

24. As set out above, this application seeks planning permission to utilise an existing agricultural access into the Moor Farm site for the purpose of commencing the construction of the internal haul road. It is proposed to carry out these works in two separate phases. The first phase would involve the stripping of soils along the line of the haul road, thus providing material to form the required screening bunds. The second phase would commence after the completion of the Brickworth Junction highway works and involve the importation of hardcore material to form the sub-base of the haul road prior to final surfacing.
25. Dealing firstly with the need for the alternative access. The Applicant has sought to argue that the proposed works conform to the overall spirit of the existing planning permissions at Moor Farm, as well as confirming a willingness to ensure that the overall development is implemented in line with the crucial deadline of 31<sup>st</sup> October 2002. In considering this argument and therefore the justification for the proposal, it is important to reflect upon the interpretation of '**development**' in the context of what is already permitted.
26. Planning permissions S.00.1519 and S.01.0939 are intrinsically linked such that development pursuant to S.01.0939 (ie mineral extraction and subsequent restoration) cannot commence unless and until the highway works required by S.00.1519 have been completed to the satisfaction of the Highways Agency and the Highway Authority. Indeed, Condition 6 of S.00.1519 states clearly that:-
- "No works within the development hereby permitted (except those contained in the public highway) and no extraction of minerals from the development site (reference S.00.1630) shall be commenced until the works in the public highway are completed. The works in the public highway shall be completed within four months of their commencement."*
27. As highlighted by certain consultees and members of the public, the proposed commencement of the construction of the internal haul road contradicts not only the requirement of Condition 6 but also its intention. The purpose of this important condition is to ensure that the '**development of the site**' (in the wider context) should not be allowed unless and until suitable access provision is made. Therefore, it can be argued that the site's development is governed by an inherent phasing arrangement whereby 'Phase 1' notionally equates to the completion of the said highway works. It is therefore considered inappropriate to permit development that contradicts the purpose of conditions attached to intrinsically linked planning permissions.
28. A number of consultees and members of the public have also sought to highlight the potential threat this proposal represents in terms of highway safety. The Highways Agency and Salisbury District Council share the view, as expressed above, that vehicles should not be permitted access to the site until the necessary works at Brickworth Junction are completed (ie in accordance with Condition 6 of S.00.1519). The Highways Agency also raised strong concerns over the potential for vehicles entering and crucially leaving the site without the benefit of traffic signal control.

29. Notwithstanding the recommendations of the Highways Agency, internal consultation with Highways Development Control resulted in the view that the proposal could be accommodated provided the existing access was suitably improved and only brought into use once the major works at Brickworth Corner were completed (as set out in the application). However, once again it must be stressed that although, from an operational perspective, the alleviation of traffic movements at Brickworth Corner by the use of an alternative access may be considered acceptable on a short-term basis, it nonetheless conflicts with the purpose of Condition 6 of S.00.1519.

### **Conclusions: Options Considered**

30. This application seeks permission to utilise an existing agricultural access in order to allow contractors onto the site to commence the construction of the internal road permitted under planning permission S.00.1519. If permitted, the works would be carried out in two phases to fit around the commencement and completion of the access arrangements at the Brickworth Corner Junction. However, Phase 1 of these proposed works (soil stripping) represents *development* and thereby contravenes the terms of Condition 6 of planning permission S.00.1519.
31. A number of consultees (crucially the Highways Agency and Salisbury District Council) and members of the public have expressed concern at the impact this proposal may pose in terms of highway safety

### **Recommendation**

32. That, in the light of the considerations set out above, planning permission to modify the terms of Condition 8 of S.01.0939 be **REFUSED** for the following reasons:-
- (i) The proposal directly conflicts with the terms of Condition 6 of planning permission S.00.1519 which states, *inter alia*, that no works within the development (except those in the public highway) shall commence until the works in the public highway are completed.
  - (ii) In the interests of highway safety, no vehicle shall enter the site for the purpose of commencing the construction of the internal haul road unless and until the access arrangements at the Brickworth Corner Junction are completed.

### **Reason for Recommendation**

33. As set out above.

**RICHARD J. LANDER**

Director of Environmental Services

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

Consultation responses and correspondence

**Environmental impact of the Recommendations contained in this Report:**

As set out in the main body of the Report

