

REGULATORY COMMITTEE

5th FEBRUARY 2003

ASHTON KEYNES: THREE BRIDGES QUARRY -
PROPOSED VARIATION OF CONDITION NO. 3 OF
PLANNING PERMISSION N.90.2924 TO AMEND THE APPROVED
DIRECTION OF MINERAL WORKING AND RESTORATION -
APPLICATION SUBMITTED BY ALLIANCE ENVIRONMENT
AND PLANNING LIMITED ON BEHALF OF
MORETON C. CULLIMORE (GRAVELS) LIMITED
(Application No. N.02.0508)

Purpose of Report

1. To consider the application and to recommend that planning permission be granted to vary Condition No. 3 of Planning Permission N.90.2924.

Background

2. Three Bridges Quarry lies to the west of the B4696, approximately 1km south-west of the centre of Ashton Keynes village, and is situated immediately adjacent to the Pike Corner Site of Special Scientific Interest (SSSI).
3. A site plan is attached at **Appendix 1**.
4. Three Bridges Quarry was granted planning permission in July 1992 (N.90.2924) for the extraction of 330,000 tonnes of sand and gravel.
5. Further planning permission was granted in July 1995 (N.95.0639) for the construction of a weighbridge, office, workshop, toilet, fuel storage and bailey bridge to serve the permitted mineral extraction operation.
6. Condition No. 12 of Planning Permission N.90.2924 required the submission of a detailed scheme of site restoration within twelve months of the commencement of that development.
7. Although such a scheme was prepared by the Wetlands Advisory Service and submitted by the then owners, Roger Constant and Company Limited, in December 1992, it was never formally approved by the Mineral Planning Authority.
8. Following changes in site ownership (Roger Constant and Company Limited to Hills Minerals and Waste Limited to Moreton C. Cullimore (Gravels) Limited), the original restoration scheme was formally withdrawn by the current owners, Moreton C. Cullimore (Gravels) Limited.

9. The submitted revised restoration scheme has been designed to accommodate the inclusion of an extension to the currently permitted quarry area, which itself is the subject of a separate report to this Committee (Application No. N.02.0506).
10. Under the terms of the existing planning permission for the Three Bridges Quarry, Condition No. 3 stipulates that the mineral is to be extracted in four phases in the sequence C, B, A and D. In principle, this provides a direction of working and restoration trending east to west (ie from the B4696 towards the Pike Corner SSSI).
11. The Applicant (Moreton C. Cullimore (Gravels) Limited) wishes to work the site as an extension to the existing operations at Dairy Farm/Manor Farm. In order to achieve this aim the Applicant wishes to agree a variation to Condition No. 3 of N.90.2924 to allow extraction to run from south to north in three phases (1 - 3 as detailed on Figure CU150/06 Rev A) but essentially working away from the Pike Corner SSSI instead of towards it.
12. The Applicant considers that by operating the quarry in a revised manner the potential for direct placement of overburden, clays and topsoils within phases immediately adjacent to the Pike Corner SSSI will be maximised, thus reducing materials handling and foreshortening the delivery time of restoration objectives.

Consultations

13. **North Wiltshire District Council** - no objections on planning grounds.
14. **Cotswold District Council** - no comments.
15. **Cotswold Water Park Joint Committee** - no objections.
16. **Ashton Keynes Parish Council** - "accepts in principle the terms of the restoration scheme but would request that the following conditions are attached if permission is given:-
 - (i) New site excavations not to commence until other sites/phases within the Applicant's control are completed and restoration commenced.
 - (ii) Completion of the programme, extraction and restoration to be within six years of commencement."
17. **Cotswold Water Park Society, English Nature, Environment Agency** - letters submitted expressing concerns/objections including:-
 - the suitability of the proposed scheme in the light of Biodiversity Action Plan (BAP) targets
 - ecological impacts
 - hydrological impacts
 - the potential effect on the Pike Corner SSSI

However, following a site visit and the submission of further information by the Applicant, the majority of these fundamental concerns have now been addressed.

18. **Thames Water** - no comments.
19. **Southern Electric** - no comments.
20. **Countryside Officer (Landscape)** - expressed concerns over matters relating to ecological, hydrological and operational considerations (eg phasing and restoration arrangements).
21. **Highways** - no comments.
22. **Rights of Way** - no comments.

Publicity

23. The application was advertised in the local press and on site by way of notices. No representations have been received to date.

Main Considerations for the Council

24. The application seeks planning permission, pursuant to Section 73 of the Town and Country Planning Act 1990, to vary the terms of Condition No. 3 of Planning Permission N.90.2924 to facilitate modifications to operational requirements across the Applicant's land holdings at Three Bridges Quarry and the Dairy Farm/Manor Farm complex. No other aspect of the original permission or the overall operation of Three Bridges Quarry is proposed.
25. 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. It is, in effect, a power to discharge or amend planning conditions but its actual effect is somewhat different. This is because the outcome of a successful (Section 73) application is the issue of a wholly new and 'freestanding' 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.
26. 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 condition(s) subject to which the permission was granted. As stated above, a decision under Section 73 effectively equates to the issue of an entirely new permission and therefore the consideration of such an application should be the same as if it were a 'normal' application. Accordingly, 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.

27. With regard to policy considerations, the proposed variation of Condition No. 3 of N.90.2924 does not, in itself, represent a material departure from the Development Plan. The proposed amendment to working practices reflects the Applicant's operational considerations, and in particular the desire to work the remaining mineral within the site as an extension to the adjacent Dairy Farm/Manor Farm complex.
28. However, in an overall sense, the justification for either permitting or refusing this proposal will inevitably be based upon consideration of the following, more pertinent, material considerations.
29. As stated above, when this application was originally submitted English Nature, the Environment Agency, the Cotswold Water Park Society and the County Council's Countryside Officer expressed concerns over the proposals ranging from ecological through to hydrological matters. Further information was required of the Applicant following a site visit with representatives of English Nature, the Environment Agency, the Cotswold Water Park Society, the County Council and the Applicant's Agents. This information was then considered by the relevant parties who attended the site meeting and resulted in the majority of objections being resolved. Bearing in mind the fact that the site currently benefits from planning permission which can be relied upon should this application be refused, the Environment Agency and others concluded that the impact of mineral working on the Pike Corner SSSI should be minimal regardless of how it is worked. However, notwithstanding this point, the Applicant has agreed to provide further hydrological monitoring points throughout the quarry. As a result, the hydrological regime within the Manor Farm/Dairy Farm/Three Bridges area should now and in the future be more readily accountable.
30. It should also be noted that the proposed amendments to operational phasing arrangements are meant to be considered in the context of two further submissions which themselves are the subject of reports to this Committee. If permitted, the new method of working will reflect proposals for a small scale extension to the site (Application No. N.02.0506) and a revised restoration scheme (Application No. N.02.0507). When viewed in total, it is considered that the proposals will go some way towards delivering biodiversity improvements to the area and the Cotswold Water Park in general through the creation of habitat.

Environmental Impact of the Proposal

31. As set out above.

Risk Assessment

32. A Risk Assessment is not relevant to the consideration of this report.

Financial Implications

33. There are no financial implications.

Options Considered

34. This application seeks permission to vary the terms of Condition No. 3 of Planning Permission N.90.2924. If permitted, the Applicant would alter the phasing arrangement for mineral extraction and restoration such that the operation would progress away from the Pike Corner SSSI rather than, as currently permitted, towards it. No other aspect of the permitted operation would be modified as a result of this application being permitted. Accordingly, monitoring of the hydrological conditions within the quarry will continue to be undertaken to ensure that the integrity of the Pike Corner SSSI is maintained.
35. As stated above, should planning permission not be granted in this instance, the Applicant will rely on the terms of the existing permission (N.90.2924) to carry out the development. However, on the basis of the further information submitted by the Applicant in support of these proposals and advice received from statutory consultees, it is considered that there are no longer any justifiable reasons for refusing this application.

Reason for Recommendation

36. The proposed variation of Condition No. 3 is justifiable in planning terms and represents only a minor amendment to the current operational phasing arrangements permitted under Planning Permission N.90.2924.

Recommendation

37. That planning permission (N.02.0508) be granted to vary the terms of Condition No. 3 of N.90.2924 to read as follows:-

The extraction of sand and gravel and direction of working shall take place in accordance with the details set out in the submitted application N.02.0508 (and the letters dated 8th August 2002 and 6th November 2002). The method of working shall be dry unless the monitoring of on-site groundwater levels and conditions in the adjacent Pike Corner SSSI reveals that the special interest of the SSSI is threatened (likely to be damaged) by the dry working of the site, in which case the Mineral Planning Authority will notify the operator in writing that certain phases or parts thereof must be worked wet.

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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