

7 DCNW0009/1880/M - CONTINUED DEVELOPMENT WITHOUT COMPLIANCE WITH CONDITION 8 OF PLANNING PERMISSION REF DCNW2004/1404/M FOR THE REMAINDER OF THE PERMISSION AT LEINTHALL QUARRIES, LEINTHALL EARLS, LEOMINSTER, HEREFORDSHIRE, HR6 9TR.

For: LEINTHALL QUARRIES per ENNSTONE JOHNSTON LIMITED, BREEDON QUARRY, MAIN STREET, BREEDON ON THE HILL, DERBY, DE73 8AN.

Date Received: 21 August 2009 Ward: Mortimer Grid Ref: 344070,268313.5

Expiry Date: 28 October 2009

Local Members: Councillor LO Barnett

1. Site Description and Proposal

- 1.1 Leinthall Earls quarry lies approximately 3 km north-east of Aymestrey and 0.5 km north of Leinthall Earls village. The nearest houses are between 150 and 250 metres of the site, with further houses within 400 metres.
- 1.2 The quarry has been worked since before 1955. At present, limestone is extracted and processed to supply coated or un-coated roadstone, using plant available at the site. Planning permission DCNW2002/0573/M approved an extension to the quarry. This and the current permission (DCNW2004/1404/M) allow extraction to continue until 2027.
- 1.3 The tarmac coating plant has operated since 2002. Orders require delivery of coated roadstone to roadworks early in the day. The plant takes an hour to warm up before operating, and the permission allowed it a 5 a.m. start so that products could be moved from 6 a.m. Condition 9 of the 2002 permission trialled this early start-up for the plant for two years. The 2004 permission extended this for a further five years.
- 1.4 The 2002 permission also allowed Sunday working on a maximum of 6 occasions each year, again initially for 2 years and later extended for a further 5 years. This was granted to allow the applicant to supply roadworks which are undertaken at weekends to alleviate traffic congestion.
- 1.5 The application seeks to vary Condition 8 of the 2004 permission, which reads as follows:
- No machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the site outside the following times 0600-1800 Monday to Friday and 0600-1200 on Saturdays, nor at any time on Sundays, Bank or Public Holidays, except that until 10 August 2009
- i) the tarmac coating plant shall be allowed to commence at 0500 Monday to Saturday,

ii) on up to 6 occasions in each calendar year the operation and the use of the tarmac coating plant and loading and despatch of vehicles on Sundays may be undertaken. A record of the date of such Sunday working shall be forwarded in writing to the Local Planning Authority within 3 working days of each and every occasion of Sunday working.

1.6 The application is to enable the plant to continue to operate in the same way until the end of the permission in 2027. Proposed new wording of the condition can be found at condition 3 in the recommendation below. It includes working times for Sundays but no other changes are proposed.

2. Policies

3. Herefordshire Unitary Development Plan 2007

Planning History

S1 – Sustainable development
 S2 – Development requirements
 S9 - Minerals
 DR2 – Land use and activity
 DR4 - Environment

3.1 West Midlands Regional Spatial Strategy

NW
 2002
 0573/M

Policy M2 – Minerals Aggregates

NW
 2004
 1404/M

National Policy Guidance – Minerals Planning Statement 1

01/1013/M - Additional use to allow importation and recycling of secondary aggregates, approved 15th June 2001.

3.2 NW2002/0573/M - Extension to quarry, approved 27th August 2002.

3.3 NW2004/1404/M – Continued development without compliance with conditions 9 and 10 of NW202/0573/M, approved 14th July 2004.

4. Consultation Summary

Statutory Consultations

4.1 Environment Agency - no objections, no conditions recommended.

4.2 Forestry Commission - no comments; there will be no effect on the woodland.

Internal Council Advice

4.3 Environmental Health Officer - Site operations are regulated by the Environment Agency under the Environmental Permitting regime. I am not aware of any complaints received by Environmental Health. No objection to the quarry continuing to operate as it has since 2002.

4.4 Transportation Manager - No objections; no highway implications.

5. Representations

5.1 Aymestrey Parish Council – Request for other changes to the permission. These are summarised as follows:

- Permission to operate the quarry and tarmac plant should be granted for a further 7 years only.
- Operating hours should be changed from a 6 am start to 7 am.
- Sunday working times should be restricted.
- The operators should provide a fund for soundproofing dwellings along the route used by lorries.

The response also refers to vehicles exceeding the 30mph speed limit on the A4110 through Aymestrey and comments on the condition and/or failure of some of the tree planting.

- 5.2 Two letters from residents have been received; Mr K Johnston, Wits End Cottage, Aymestrey, Leominster, HR6 9ST, supports the Parish Council's comments but has not expressed any specific objection. He comments on the need for clarity as to the number of Sunday working occasions that are permitted and on traffic issues on the A4110, including excessive speed. Mr K Holland, The Cottage, Aymestrey, Leominster, HR6 9ST, has written to express his concerns about traffic using the A4110 and the quarry's working hours, but the points he has raised do not relate to the two clauses in condition 8 of the 2004 permission that this application seeks to vary. These other matters of concern will be discussed in the appraisal below.
- 5.3 The full text of these letters can be inspected at Planning Services, Garrick House, Widemarsh Street, Hereford and prior to the Committee meeting.

6. Officer's Appraisal

- 6.1 Applications made under Section 73 of the Town and Country Planning Act 1990 must be treated as for any other planning application, with due regard being paid to the development plan and other material considerations. However, case law confirms that an application to vary a condition does not present an opportunity to amend anything other than what has been applied for. Circular 11/95 states that the original permission will subsist regardless of the outcome of a s73 application, and also that a condition should not be retained unless there are sound and clear-cut reasons for doing so.
- 6.2 The key issue in this instance is whether the permitted arrangements for starting up the tarmac coating plant and working on up to 6 Sundays per year have, in themselves, caused any harm to amenity over the last 7 years. The period limit is understood to have been initially imposed for two years as an experiment, due to some concern that the start-up of the new tarmac plant, and/or the Sunday working arrangements, might adversely affect the amenity of the quarry's closest neighbours. The 2004 permission extended the period for a further five years. For each Sunday working occasion, the operators are required to give written notice to the local planning authority. According to the case files, only two or three Sundays have ever been worked in any year, and so far only one in 2009. No complaints have been received relating to the operation of the tarmac coating plant or the Sunday working since these were approved.
- 6.3 Clause (ii) of Condition 8 of the 2004 permission does not specify any operational times for Sunday working; apparently this was an omission. To rectify this, the applicant has given written agreement that the hours indicated in the recommendation below would be reasonable and adequate. There is no proposal to alter any existing arrangements, and there would be no increase in noise or traffic, or any changes to current practices. As noted above, consistently less than half the annually permitted Sundays have been worked.
- 6.4 The concerns raised by Aymestrey Parish Council and two residents generally do not relate to the application. The quarry has a legitimate permission; any attempt to restrict existing rights

such as working hours would be regarded as unreasonable. It could result in legal challenge with claims for both costs and compensation which would be very likely to succeed.

- 6.5 Nonetheless the existence of some local disquiet, mostly about traffic through Aymestrey, is recognised. It should be noted that this road is a main route for HGVs of which quarry vehicles represent a small proportion. The quarry's existing permission includes 22 conditions, and any operational issues (if substantiated) may be addressed through negotiation and enforcement procedures if necessary. This application has no implications for traffic on the A4110 through Aymestrey, because no operational changes are proposed. Speeding is a police matter not relevant to planning, but the quarry operator has agreed to remind all drivers under their control of the need to observe speed limits at all times.
- 6.6 Under the Environment Act 1995, all minerals permissions are reviewed every 15 years, to reflect changing environmental circumstances. This takes the form of an application for updated conditions, for which no fee is due. Generally the applicant will submit a proposed set of modernised and revised conditions, which the local planning authority may approve, or otherwise impose its own conditions. However such applications may not be refused or used to limit the operator's established rights for the winning and working of minerals without liability for payment of compensation. Under current legislation, the 2002 permission at Leinthall will be due for review in 2017. At that time an opportunity will arise to reassess the operational terms, and the proposals for final restoration of the site, subject to the limitations noted above.
- 6.7 There are no policies that would prevent continuation of established practice until the end of the permission in 2027. National and regional guidance broadly supports the need for operators to meet market conditions, which would include the timely delivery of necessary infrastructure materials to roadworks. Herefordshire currently has only three operational aggregate sites, including Leinthall Quarry. Together these provide aggregate in accordance with the obligatory regional apportionments detailed in the Regional Spatial Strategy. The tarmac plant at Leinthall is a regionally important facility which contributes to the provision of essential materials for road-making and repairs. The quarry's continuing commercial viability is dependent upon efficient operation, directly and indirectly contributing to local employment. The lack of any complaints arising from either the 5 a.m. start-up for the tarmac plant or the Sunday working supports the view that there are no longer any sound and clear-cut reasons to control the period for these allowances. The proposal is therefore recommended for approval.

RECOMMENDATION

That planning permission be granted subject to the following conditions:

- 1. The development shall continue to be carried out in all respects strictly in accordance with the approved details and plans [drawing nos. NL 04808/06; NL 04808/phs 1, Phase 1; NL04808/phs 2, Phase 2; NL 04808/phs 3, Phase 3; NL 04808/phs 4, Phase 4; PA7 (Final Restoration, A3 coloured), PA8 (Sections 'A-A' to 'E-E')] as submitted under planning applications reference DCNW2002/0573/M and DCNW2004/1404/M, except where otherwise stipulated by conditions attached to this permission.**

Reason: To ensure adherence to the approved plans in the interests of a satisfactory form of development, in the interests of the amenities of local people, the landscape, pollution control, nature conservation, the control of nuisances and to ensure a satisfactory reclamation of the site, in accordance with policies S1, S2 and S9 of the Herefordshire Unitary Development Plan 2007.

- 2. B04 Amendment to existing permission**

Further information on the subject of this report is available from Mr D Klein on 01432 260136

3. No machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the site outside the following times: 0600-1800 Monday to Friday and 0600-1200 on Saturdays, nor at any time on Sundays, Bank or Public Holidays, except that until 10 August 2027:
- a) The tarmac coating plant shall be allowed to commence at 0500 Monday to Saturday;
 - b) or up to and including six occasions in each calendar year, the operation and use of the tarmac coating plant, and loading and despatch of vehicles on Sundays may be undertaken. On such Sunday working days, no machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the site outside 0700 - 1600 hours, except that the tarmac plant shall be allowed to commence at 6 am. Written notification of the date of such Sunday working shall be forwarded to the Local Planning Authority within 3 working days of each and every occasion of Sunday working.

Reason: In order to protect the amenity of occupiers of nearby properties in accordance with policies S1, S2 and S9 of the Herefordshire Unitary Development Plan 2007.

4. Copies of:
- a) This planning permission;
 - b) All other permissions currently in force;
 - c) All current approved plans;
 - d) All other documents subsequently approved in accordance with any current permission, conditions or amendments approved pursuant to any or all;

Shall be held in the site office at Leinthall Quarry and be made available to any person to read on request during the permitted hours of opening.

Reason: To ensure that employees, members of the public and officers of the Council may readily make themselves aware of the requirements of the planning permission and approved plans and schemes and to ensure that all aspects of the proposal are complied with in accordance with policies S1, S2 and S9 of the Herefordshire Unitary Development Plan 2007.

INFORMATIVES:

- 1 The decision to grant planning permission has been taken having regard to the provisions of the Development Plan: in particular policy M2 of the West Midlands Regional Spatial Strategy and the relevant policies of the Herefordshire Unitary Development Plan 2007 set out below. In reaching this decision, the local planning authority was mindful of the particular circumstances of the case, namely the acknowledged need to continue to provide an adequate and steady supply of aggregates, the applicant's existing and established rights for the winning and working of minerals, the fact that there are no traffic implications and no proposed operational changes to current practices, and because no complaints have been

received or substantiated relating to the operation of the tarmac coating plant or Sunday working during the period within which these have been permitted.

The local planning authority has concluded that there are no clear-cut or sound reasons for retaining the period time limits for starting up the tarmac coating plant and working the quarry on Sundays for up to 6 occasions in each year. On this basis there would be no adverse environmental effects that would justify refusal

Policies: Herefordshire Unitary Development Plan 2007:

- S1 - Sustainable development
- S2 - Development requirements
- S9 - Minerals
- DR2 - Land use and activity
- DR4 - Environment

2 Conditions 1, 4, 5, 6, 9, 10, 16, 17 and 19 of permission DCNW2002/0573/M granted 27 August 2002 were amended under planning permission DCNW2004/1404/M in order to reflect the fact that that permission had been commenced and that the wording of some conditions was no longer appropriate. Permission DCNW2004/1404/M continues to subsist and those amendments are not negated by this new permission.

3 Condition 21 of planning permission DCNW2004/1404/M states that it should be implemented in lieu of, and not in addition to, DCNW2002/0573/M. Condition 8 of planning permission DCNW2004/1404/M is now superseded by condition 3 of the permission hereby granted. Otherwise, this new permission does not supersede permission DCVW2004/1404/M, and should be regarded as additional to it, subject to the amendments detailed above.

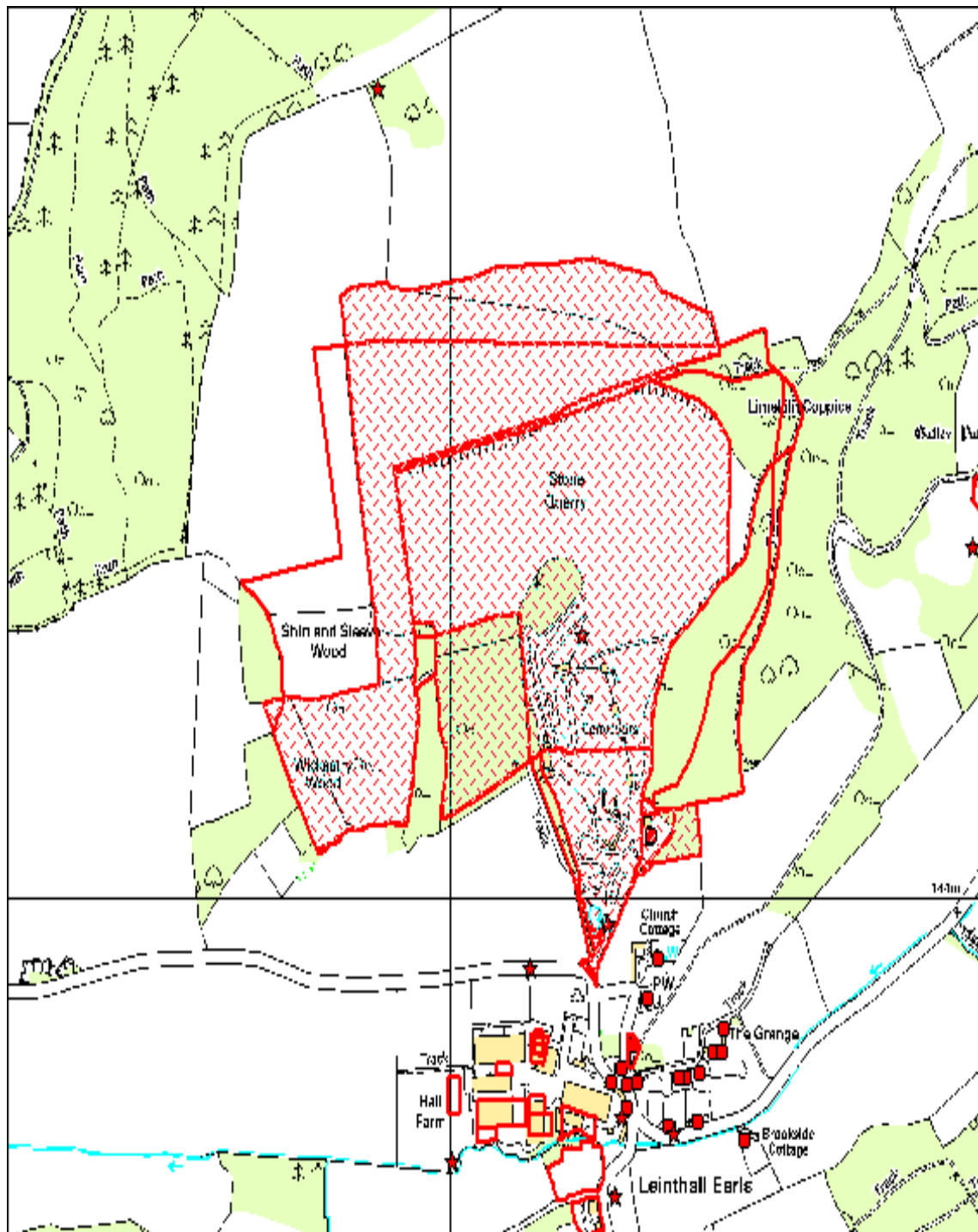
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: DCNW0009/1880/M DMDCN/092330/M

SITE ADDRESS : LEINTHALL QUARRIES, LEINTHALL EARLS, LEOMINSTER, HEREFORDSHIRE, HR6 9T

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